



आरत का राजपत्र

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सं. 50] नई दिल्ली, दिसम्बर 6—दिसम्बर 12, 2015, शनिवार/अग्रहायण 15—अग्रहायण 21, 1937

No. 50] NEW DELHI, DECEMBER 6—DECEMBER 12, 2015, SATURDAY/AGRAHAYANA 15—AGRAHAYANA 21, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
 Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
 PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
 Statutory Orders and Notifications Issued by the Ministries of the Government of India
 (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2253.—केन्द्र सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए गोवा राज्य सरकार, गृह विभाग (सामान्य) सचिवालय, पोर्वोरिम, की अधिसूचना संख्या 2/97/2012-एचडी (जी) दिनांक 08 अक्टूबर, 2012 के माध्यम से प्राप्त सहमति के द्वारा ब्रिटिश नागरिक सुश्री डेन्सी कैरोल स्वीनी की मृत्यु से संबंधित अन्जुना पुलिस स्टेशन में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 302 के तहत दर्ज एफआईआर सं. 86/2012 दिनांक 06/07/2012 के अंतर्गत किए गए अपराध तथा उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध/अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार समस्त गोवा राज्य में करती है।

[फा. सं. 228/61/2012-ए.वी.डी.-II]

मो. नदीम, अवर सचिव

(4557)

MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 7th December, 2015

S.O. 2253.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Goa, Home Department (General), Secretariat, Porvorim, vide Notification No. 2/97/2012-HD(G) dated 8th October, 2012, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Goa for the investigation of the death of the British National, Ms. Denyse Carole Sweeney, an offence vide Crime No. 86/2012 under section 302 of the Indian Penal Code, 1860 (Act No. 45 of 1860), registered at Anjuna Police Station in FIR No. 86/2012 dated 06.07.2012 and any other offence/ offences committed in the cause of the same transaction or arising out of the same facts.

[F. No. 228/61/2012-AVD-II]

MD. NADEEM, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक व्यूरो)

नई दिल्ली, 5 दिसम्बर, 2015

का.आ. 2254.—भारतीय मानक व्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उपनियम (3) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अधिसूचित करता है:

अनुसूची

भारतीय मानक संख्या	भाग	अनु- भाग	वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क (रु.)	इकाई दर	स्लैब में इकाईयां	शेष प्रचालन तिथि
					बड़े पैमाने पर एम.एस.एम.ई. के लिए	स्लैब 1 (रु.)			
210	-	-	2009	भूरे लोहे की ढलाईयां विशिष्ट (पाचवां पुनरीक्षण)	1 टन	39000.00	31200.00	72.00	सभी — 16.11.2015

[संदर्भ : सीएमडी-2/16 : 210]

सी. के. महेश्वरी, वैज्ञानिक 'जी.' एवं उपमहानिदेशक (प्रमाणन)

MINISTRY OF CONSUMERS AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 5th December, 2015

S.O. 2254.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the Marking Fee for the products given in the schedule:

SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Marking Fee (Rs.)		Unit Rate Slab-1	Units in Slab-1	Remaining	Effective Date
						Large Scale	MSME				
210	-	-	2009	Grey Iron Castings-Specification (Fifth Revision)	1 Ton	39000.00	31200.00	72.00	All	-	16.11.2015

[Ref.: CMD-2/16 : 210]

C. K. MAHESHWARI, Sc. 'G' & DDG (Certification)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2255.—ऑद्योगिक विवाद अधिनियम, 1947 (1947

का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 152/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/2/2002-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 7th December, 2015

S.O. 2255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 152/02) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/2/2002-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/152/02

General Secretary,
Daily Wages Bank Employees Association,
Hardev Niwas, 9,
Sanwer Road, Ujjain ... Workman/Union

Versus

Asstt. General Manager,
State Bank of India,
Zonal Office, Hamidia Road,
Bhopal (MP) ...Management

AWARD

Passed on this 18th day of November, 2015

1. As per letter dated 7-11-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/2/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in terminating the services of Shri Shyam Sunder Kekre w.e.f. 11-12-98 and not regularizing his services is justified? If not, what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/2 to 2/9. Case of Ist party is that he was working as a temporary messenger for 64 days during the period 29-11-84 to 31-1-85. That as per settlement dated 17-11-87, temporary employees working for 30 days during the period 1-7-75 to 31-7-88 was eligible for absorption as permanent employee. Workman reiterates that he was called for interview with documents on 19-12-89. His name was included in select panel. After 6 years of select panel, he

was engaged as peon/ messenger from 24-6-95. He worked with devotion. He worked for 300 days. He was paid Rs.48/- per day from petty cash. In 1997, he was not called for interview as he was also interviewed in 1989 and his name was included in select list. On 1-12-98, he was called in chamber of Branch Manager Mr. Aryan. He was paid cheque of Rs.3600 informing him that his services were not required. Workman reiterated that he had worked for 64 days during 1984-85 as per the settlement. He was interviewed in 1989, his name was included in select list. He completed more than 240 days continuous service after his engagement from 24-6-95. His services were terminated illegally.

3. Ist party workman further submits that after interview in 1997, candidates working less number of days than him were given appointment. Names of such candidates are given Santosh Mishra appointed on 15-1-93, Raj Kumar 8-12-93, Vinod Singh, Raj Kumar, Manoj Ingde etc Ist party claims that he is covered as employee under Section 25 B of ID Act. His services were terminated without hearing him. He was not paid retrenchment compensation. Seniority list of retrenched employee was not displayed. Therefore his retrenchment is illegal. That since 24-6-95, he worked for 1087 days. Termination of his service without notice is illegal. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement at Page 14/1 to 14/13 opposing claim of workman. 2nd party raised preliminary objection that Shri Ram Nagwanshi was employee of the State Bank. He is dismissed after enquiry. He is not competent to represent workman. 2nd party submits that during 29-11-84 to 31-1-85, workman had worked for 64 days. Workman was called for interview. His name was included in select list but workman could not be appointed as his number of working days were less. 2nd party has contented that workman had worked only for 87 days. He not completed 240 days continuous service. Even completion of 240 days service does not give him right for reinstatement. The select list was kept alive till March 1997 giving opportunity to the candidates. Ist party was engaged in Indore Main branch for 907 days during 1997 to 1998. He was discontinued after making payment of wages and retrenchment notice under ID Act. 2nd party reiterates that workman is not entitled to any relief as he was paid retrenchment compensation and notice. All adverse contentions of workman about violation of Section 25-F, G, N are denied. There is no question of violation of section 29 of ID Act. 2nd party prays for rejection of claim.

5. Workman filed rejoinder at Page 15/1 to 15/2 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Ass'tt. General Manager, State Bank of India, Bhopal in terminating the services of Shri Shyam Sunder Kekre w.e.f. 11-12-98 and not regularizing his services is justified?

(ii) If not, what relief the workman is entitled to?"

Termination of workman is illegal.

As per final order.

REASONS

7. The terms of reference pertains to legality of termination of workman and denial of regularization to him. Workman filed affidavit of his evidence supporting his claim. Workman was not produced for cross-examination as per ordersheet dated 9-5-2011. Workman did not want to examine. His evidence was closed. Case was fixed for evidence of management. as workman did not make available for his cross-examination, his evidence cannot be considered.

8. Management filed affidavit of evidence of witness Shri Dilip Mogre supporting contentions of 2nd party in Written Statement that workman had not completed 240 days continuous service. Workman was paid notice pay and retrenchment compensation Rs. 13,211/-, bonus of Rs.1503 was paid to him. As per settlement for absorption of temporary employees, workman was called for interview on 23-9-89. His name was included in select list. Workman not completed 240 days continuous service. Despite of it, retrenchment compensation and notice pay were paid to workman. Management's witness in his affidavit of evidence in para-1 has stated that workman worked for 64 days during 23-11-84 to 31-1-85 and 907 days during 1995 to 1998. The affidavit of witness of management is silent about displaying seniority list of retrenched employees. In his cross-examination, management's witness says select list Exhibit W-18 is correct. Workman was engaged from 1995, appointment letter was not given to him. At the time of terminating workman, list of retrenched employees were displayed on notice board. He does not know list of retrenched employees was displayed on notice board. In Exhibit W-18, select list, name of workman is appearing at S1.No.35, his working days are shown 64. Workman has not adduced any evidence that the candidates having less number of working days are appointed. Therefore claim of workman for regularization as per the settlement cannot be accepted. Copy of settlement is produced at Exhibit M-1. Temporary employees working 240 days during 12 months or less after 1-7-75 , employees completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75, temporary employees

who have completed minimum of 30 days temporary service in any calendar year after 1-7-75 are eligible for absorption. Settlements are produced at Exhibit M-4, 5 needs no detailed discussion. As any employee working less number of days than workman is established, the claim of workman for regularization cannot be accepted.

9. As per evidence in cross-examination of management's witness, he claims ignorance about displaying list of retrenched employees on notice board, workman had worked for 907 days during 1995 to 1998, its breakup is not given. It is clear that workman worked more than 240 days continuous service during 1995 to 1998. While terminating workman, list of retrenched employee was not displayed.

Section 25-G of ID Act provides-

Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

Rule 77 of ID Act provides-

The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment atleast seven days before the actual date of retrenchment.

10. 2nd party has not complied Rule 77 of ID Act therefore retrenchment of workman is illegal. Merely payment of compensation amount Rs. 3600/- by cheque cannot legalize retrenchment of workman. For above reasons, I record my finding in Point No.1 in Negative.

11. **Point No.2-** workman had worked only for 64 days during settlement period. His claim for regularization cannot be accepted for reasons given below. While terminating services of workman, seniority list as per Rule 77 was not displayed, secondly retrenchment of workman is illegal. As per evidence of management's witness, workman had completed 907 days working during 1995 to 1998. Workman was working 64 days only during 1984 to 1985. Thus workman was continuously working during 1995 to 1998. Considering period of working, compensation Rs. 75,000/- would be appropriate. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management of Asstt. General Manager, State Bank of India, Bhopal in terminating the services of Shri Shyam Sunder Kekre w.e.f. 11-12-98 and not regularizing his services is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs.75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2256.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सांगली बैंक लि. (अब आईसीआईसीआई के रूप में जाना जाता है) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, कोल्हापुर के पंचाट (संदर्भ संख्या 86/2013) (पुने 607/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12025/01/2015-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. (IDA) No. 86/2013) (Pune Ref. No. IDA No. 607/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Kolhapur as shown in the Annexure in the Industrial Dispute between the management of Sangli Bank Ltd. (Now known as ICICI Bank Ltd.) and their workman, received by the Central Government on 7-12-2015.

[No. L-12025/01/2015-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

IN THE SECOND LABOUR COURT AT KOLHAPUR

CORAM: SHRI M.S. KULKARNI, Presiding Officer

Reference (IDA) No. 86/2013

(Labour Court, Pune Ref. IDA No. 607/2004)

BETWEEN:-

(The Sangli Bank Limited)

Now known as ICICI Bank Ltd.,

Rajwada Chowk, Sangli.

...First party

And

(Ramdas Trimbak Umrani),
Died, hence through legal representative
(1) Smt. Madhuri Ramdas Umrani,
(2) Miss. Prajakta Ramdas Umrani,
(3) Sourabh Ramdas Umrani,
(Natural Guardian 2nd Party No.1 for No. 2 & 3).
(4) Smt. Sayali Harshal Deshpande,

All R/o. Somwar Peth, Karad,
Tal. Karad, Dist. Satara ...Second Party

APPEARANCES:

Shri. U. J. Chipre, Advocate for First party.

Shri. K. D. Shinde, Advocate for Second party.

AWARD

(Dated :- 19.12.2013)

The second party workman attached as a clerk with the first party bank which is now taken over by ICICI Bank, was chargesheeted for 2 misconducts as (1) doing an act prejudicial to the interest of the bank and (2) breach of any Rule of the business of the bank, by charge-sheet dated 29/1/01. Second party replied charge-sheet on 15/2/01. Second Party workman was but required to face enquiry which was commenced on 16/3/01. On 10/7/01 second party workman submitted no evidence purhis and accordingly enquiry came to be closed. Enquiry officer submitted his report on 11/12/01 holding both misconducts leveled against second party workman are proved. On the basis of this report second party workman came to be dismissed without notice from the services w.e.f. 8/7/02.

2. Second party workman then approached Government of India from whom industrial dispute in between both parties was referred to the Labour Court, Pune on 27.09.2004. Thereafter, by new order dt. 22.01.2008 the industrial dispute came to be transferred to Labour Court, Sangli. On having appearance from the both parties and respective contentions from them Labour Court, Sangli decided only one issue pertaining to the mechanism of enquiry by its order dated 15/2/12. Thereafter, by an order of the Hon'ble President, Industrial Court, Maharashtra, Mumbai, dated 10/5/13 this reference came to be transferred to this Court for further adjudication.

3. After having received R. and P. of reference from Sangli Court notices were issued to both parties. They appeared before this court.

4. Through Statement of Claim, second party contends that, he joined the services of then Sangli Bank on 06.11.1980 as a Clerk. He has rendered 22 years service without blame. He has been because of that given letter of appreciation on behalf of bank. On 20.12.2000 he was

attached Vadgaon Haveli branch, and on relevant date he was on leave. On 21.12.2000 when he went to attend duty, Branch Manager informed him that he had done misconduct of embezzlement. Thereafter he was suspended from the services from 12.01.2001 and charge sheet was issued on 29.01.2001 alleging charge of embezzlement in the account of customer Mr. Dobhada. He had denied said charge vehemently vide reply dt. 15.02.2001, but he was caused to face enquiry. The charge was baseless, imaginary and untenable. He was not allowed to examine himself during course of enquiry. The material witness Shri. Dobhada was even not brought before Enquiry Officer. Management witness had given contradictory statements, while admitted some important things. Enquiry Officer did not appreciate evidence in right perspective, and because of that drew perverse findings. First Party issued him the final show cause notice dt. 12.04.2002 proposing dismissal punishment. Personal hearing was held on 26.04.2002, but he came to be awarded with the punishment of dismissal which is shockingly disproportionate. Second Party workman further contends that, he is now 49 years old. In his family, there is aged mother, wife and three children. He is the only bread winner of his family. So the punishment of dismissal be set aside and First Party be directed to reinstate him in his original post with continuity of service and pay him full back wages.

5. First Party vide its written statement denies whole contention of Second Party. First Party contends that, Second Party was attached at Vadgaon-Haveli branch on 20.12.2000 as a Clerk. On relevant date he was on leave. One customer of the bank namely Mr. Dobhada came to the branch with his wife and demanded repayment of fixed deposit receipt bearing no. 941687 which was dtd. 16.12.1995 for Rs. 10,000/- and due on 16.12.2000. On scrutiny, it was found that, on 16.12.1995 then Branch Manager was on leave. The Cashier had the charge of Branch Manager. But on relevant date, for official work, he was outside of the bank. So, Second Party alone was looking after the branch. On relevant date, Mr. Dobhada withdrew Rs. 10,000/- from his account by withdrawal slip. Reverside of withdrawal slip, bears signature of Second Party, indicating that Second Party had accepted said amount on behalf of Mr. Dobhada. On further investigation it was found that, on relevant date Second Party took a blank F.D. Receipt illegally from the stock of the stationary of the First Party. Then filled & signed it showing that amount which was withdrawn by Mr. Dobhada was invested in fixed deposit. While doing so, second party workman did not register the entry of the amount of Rs. 10,000/- in any register, rather pocketed the said amount for his own gain. To cover this illegal act, the Second Party altered the receipt no. 941686 to 941687 which was a mid-term deposit receipt issued to one Mrs. Pushpa Raghunath Patil written in F. D. Register bearing account

no. 447. Considering this grave misconduct, Second Party was issued charge-sheet. Enquiry was conducted by following principles of natural justice. He was given abandon opportunity to lead evidence, but he declined to lead evidence by moving purshis to that effect. Second Party himself was obliged to brought Mr. Dobhada before Enquiry Officer to prove his innocence, but he did not do so. Enquiry Officer considering oral and documentary evidence produced before him, drew findings against Second Party. These findings are just and proper. Second Party was then issued show cause notice dt. 12.04.2002 and given personal hearing on 26.04.2002, then only second party has been dismissed from the services on 08.07.2002. The punishment is not disproportionate to the grave misconducts. It is not proper for this court to interfere with the punishment. Hence, this Reference be answered in the negative.

6. Court considering the rival contention of both the parties, so also the question framed in the Schedule of the Reference, drafted issues at Exh. O-6. First Issue of them about legality of enquiry was decided by Presiding Officer at Labour Court, Sangli on 15.02.2012. This court decided Issue No. 2 pertaining to the findings of the Enquiry Officer vide Part-I Judgment dt. 10.09.2013. Now remaining issues are for my determination. I give my findings against them for the reasons as below :

No.	Issues	Findings
3.	Does the second party prove that the punishment of dismissal awarded by first party to him is disproportionate?	In the negative
4.	Whether the second party is entitled for the relief of reinstatement with continuity of service and full back wages as sought?	In the negative
5.	What Award?	Reference is answered in the negative.

REASONS

EVIDENCE:-

7. During the pendency of Reference before Labour Court, Sangli, Second Party ceased to life. His legal heirs have been brought on record. Widow of Second Party has produced on record affidavit in lieu of examination in chief in concern of remaining issues. There is no evidence from the side of First Party.

ARGUMENTS:-

8. On behalf of Second Party, Ld. Senior Advocate Shri K.D.Shinde argued orally. He even produced on record synopsis of his argument. The gist of submissions of Advocate Shri K.D.Shinde is that, Second Party had

rendered 22 years unblemished service to the then First Party Bank. It was alleged against Second Party that, he had embezzled an amount of Rs. 10,000/- of the bank customer namely Mr. Dobhada. But there was no Complaint of Mr. Dobhada to the bank. Even during enquiry, Mr. Dobhada was not examined by the Bank. So, the findings of the Enquiry Officer are not just and proper. Even if it is held that, Second Party committed misconduct leveled against him, but considering the fact that his past service record was clean and there was no complaint from the concern customer, Second Party should not have been awarded with punishment of dismissal. Ld. Sr. Advocate Shri. K.D.Shinde relying on the judgment of Hon'ble Gujarat High Court in the case of A.M.Parmar V/s. Gujarat Electricity Board, Baroda [1982 LAB I.C. 1031], submitted that, Second Party workman is now no more, so there is no question of reinstatement. But as his family is on road, First Party Bank be directed to pay the widow all retiral benefits. This direction U/S. 11-A of the I.D.Act from the court will serve the purpose of justice.

9. On behalf of First Party, when court had to decide Issue No. 2 about findings, Written Argument was filed supposing that the Sangli Court had decided first two issues vide its order dt. 15.02.2012. Ld. Advocate for the First Party in short through this written argument submits that, as grave misconducts are held to be proved against Second Party, the punishment awarded to the Second Party is proportionate. Ld. Advocate has given stress on the fact that, First Party is engaged in the banking business, where trust and faith of public at large is required to causes them to invest their funds. Accordingly learned advocate submitted that, the misconduct of Second Party has breached said faith and trust, hence the awarded punishment is proportionate. Ld. Advocate has placed reliance to that effect on the judgments in the case of :

1. J.A.Naiksatam V/s. Prothotary and Senior Master, High Court of Bombay and others [2005 LAB I.C. 461 S.C.]
2. Mahindra & Mahindra Ltd., V/s. N.B.Naravade etc. [2005 LAB.I.C. 1333 S.C.]
3. Bharat Heavy Electricals Ltd. V/s. M. Chandrasekhar Reddy and others [2005 LAB. I.C. 1345 S.C.]
4. State of Gujarat V/s. Ashokkumar Shantilal Doshi [2005 LAB. I.C. 2536 Gujarat H.C.]
5. B. Srinivasa Reddy V/s. Karnataka Urban Water Supply and Drainage Board Employees' Association & Ors. [2006 LAB. I.C. 2484 Karnataka H.C.]

10. Now it is time to advert to the issues.

ISSUE NO.3 TO 5 :-

11. Second Party was leveled with the charge that, on 20/12/2000 when he was absent on duty in the branch at Vadgaon Haveli, Tal. Karad, one Mr. Dobhada had come in the bank with one fix deposit receipt which was already matured on 16/12/2000. At the relevant time in the branch, branch Manager Shri. A. M. Karade and peon namely V. N. Gosavi were present. Cashier N. S. Kusurkar came there meanwhile from Karad branch of first party bank. These 3 persons verified the said FDR which was bearing no. 941687. They could not find the mentioning of that FDR in any register. So Mr. Kusurkar took details of said FDR on one chit. When Mr. Kusurkar verified the said FDR he found that said FDR was in the hand writing of second party and he himself had signed it. Mr. Karade & Kusurkar tried to contact second party on phone but he was not in reach. On next day i.e. on 21/12/2000 in the morning second party and Mr. Kusurkar visited Mr. Karade at his residence where second party admitted that on 16/12/95 he had issued the said fabricated FDR to Mr. Dobhada. Second party then assured Mr. Karade that he would pay amount of FDR to Mr. Dobhada, so he should not make any complaint to the higher authorities of the first party. It was further on investigation found that on 16/12/95 second party was handling the charge of cashier at the same branch while Mr. Kusurkar was handling charge of branch manager. On relevant date Mr. Dobhada first deposited Rs. 3500/- and then withdrew Rs. 10,000/-. It is alleged that on the back side of the withdrawal slip second party put his signature in receipt of said amount. It is alleged that Mr. Dobhada had allowed second party to take the money to deposit in FDR for 5 years. It is accordingly alleged that second party at relevant time took one blank FDR receipt from the stock and by writing in his own hand writing and putting signature thereon issued it to Mr. Dobhada to show that it was the genuine receipt. Second party while doing so did not account the said amount Rs. 10,000/- in any of the accounting books of the Branch, rather pocketed the said amount for his own purpose. It is also alleged that to show that receipt bearing no. 941687 issued to Mr. Dobhada is genuine second party forged with one account which was in the name of Sou. Pushpa Raghunath Patil bearing No. 477 to whom FDR bearing No. 941686 was issued in the month of July 2001 for short term deposit, to change the number of said receipt from No. 941686 to 941687.

12. Against this allegation second party was prosecuted for two misconducts as, (1) doing an act prejudicial to the interest of the bank and (2) breach of any Rule of the business of the bank, by charge-sheet dated 29.01.2001. No doubt, Mr. Dobhada had not made any complaint against Second Party with the First Party. But the fact is that, from 16.12.1995 Second Party had used amount of Rs. 10,000/- of the First Party Bank without its consent or knowledge, and to cover up the said misconduct, he had fabricated certain bank documents. This act on behalf of

Second Party was sufficient to loss faith in him. It is clear that, so far as banking business is concern, the trust and faith reposed in the employee by the customer of the bank as well as public at large is very material. If any incident which causes public to withdraw faith or trust in the bank, causes it to suffer heavy loss. Sincerity and honesty on the part of employee is utmost important in banking business. Here in this case, the Second Party did not show honesty in concern of one of the customers i.e. Mr. Dobhada who was his neighbour at Karad, who only because of trust kept in Second Party, opened account in the First Party Bank at Vadgaon Haveli Branch, where Second Party was serving. Admitted facts come on record that, even for number of times, Mr. Dobhada would ask to deposit or withdraw the amount on his behalf, the said trust is shattered by the Second Party by utilizing his amount which was in fact amount of the first party bank without it's knowledge for five years. All the judgments whereupon First Party has relied, led the same principle that, when there is misconduct of misappropriation by the employee working in the bank, the punishment of dismissal awarded to him is just and proper, and court can't interfere with the said punishment u/s 11-A of the Act lightly.

13. The judgment of Hon'ble Gujrati High Court in case of Parmar relied upon by Second Party in such situation will not help Second Party. So, Reference deserves to be answered in the negative.

Hence following is the Award :

AWARD

1. The reference is answered in the negative.
2. Inform to the State Government.

Place : Kolhapur

Date:- 19.12.2013

M. S. KULKARNI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2257.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 83/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12011/48/2011-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2011) of the Central Government Industrial Tribunal-cum-

Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of ICICI Bank and their workman, received by the Central Government on 7-12-2015.

[No. L-12011/48/2011-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/83/2011

General Secretary,

Dainik Vetal Bhogi Karmchari Sangathan,

F-1, Tripti vihar,

Opp Engineering College,

Ujjain (MP)

...Workman/Union

Versus

Regional Manager,

ICICI Bank, Regional Office,

11, Alankar Complex,

Zone-II, MP Nagar, Bhopal

...Management

AWARD

Passed on this 18th day of November 2015

1. As per letter dated 14-9-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12011/48/2011-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of ICICI Bank Ltd. (Earstwhile Bank of Rajasthan Ltd.) in terminating the services of Shri Ramchandra S/o Shri Prabhu Lal w.e.f. 1-3-08 is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim through General Secretary of Daily Wage Employees Union. Case of Ist party is that he was engaged by Branch Manager R.G.Gatani on wages Rs. 15/- per day from April 1998. The wages were increased time to time to Rs. 40, 45. He was working from Monday to Saturday. He was paid wages drawn in regular pay. His services were terminated from 28-2-08 without notice, retrenchment compensation was not paid to him. He worked under different Branch Managers. His pay was shown paid through top Security Agency. He completed more than 240 days continuous service at Shamgarh branch. He is covered as employee under Section 25 B of ID Act. his services are terminated in violation of Section 25-F of ID Act. the policy of last

come first go was not followed. Violation of Section 25-G, N of ID Act is alleged. After termination of his service, other daily wage employees were engaged. Workman was not given opportunity to work thereby 2nd party violated Section 25 H of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. Preliminary objection is raised by 2nd party that Shri R.Nagwanshi is dismissed employee of the Bank. He is not competent to represent the workman. Shri R.Nagwanshi is not holding degree of law. He is not registered as an Advocate. However he has made his profession under the guys of Trade Union. That Bank of Rajasthan was merged with ICICI Bank on 12-8-2010. At the time of merger, any sub staff was not working. There was no employer employee relationship existing between parties. Workman had not completed 240 days continuous service. He was engaged as casual labour on wages Rs.15/- per day for cleaning work as per exigencies. M/S Top Security was engaged in Bank of Rajasthan. Workman was working as office boy under said contractor holding Ticket No. 5058. Ist party workman was on pay roll of the Top Security Ltd. He was not terminated by 2nd party. Ist party has mischievously contented that he completed 240 days continuous service. Violation of Section 25-F, G, H is denied. 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the action of the management of ICICI Bank Ltd. (Earstwhile Bank of Rajasthan Ltd.) in terminating the services of Shri Ramchandra S/o Shri Prabhu Lal w.e.f. 1-3-08 is legal and justified? In Affirmative
- (ii) If not, what relief the workman is entitled to?" Workman is not entitled to any relief.

REASONS

5. Ist party workman is challenging termination of his service for violation of Section 25-F,G of ID Act, violation of Section 25 H is also alleged. Ist party filed affidavit of his evidence supporting his contentions in statement of claim. However he failed to appear for his cross-examination. Evidence of workman cannot be considered. Documents Exhibit W-1 produced by workman pertains to notice of calling applications for appointment in MP from the casual employees working for 180 days or full time employees working for 80 days. Exhibit W-2 is interview call issued to workman. Workman was called for interview on 15-4-89 along with documents. Exhibit W-3 is panel of

selected candidates. Name of Ist party workman is not appearing in it. Exhibit W-4 is letter given by Dy.General Manager asking details in respect of casual labours pertaining to the workman. Rate of wages is shown Rs.40/-, Rs.40+15. Zerox copies of vouchers are produced. Workman has not adduced evidence to prove the same.

6. Management's witness Shri Shristi Priya filed affidavit of her evidence contending that Shri Ram Nagwanshi was dismissed employee of the Bank, as such he is not competent to represent the workman. Ist party workman Shri Ram Nagwanshi was not working as peon in the Bank. Employer employee relationship is denied. In her cross-examination, management's witness says appointment letter was given to the workman, his attendance was not maintained. Attendance Register has become old, could not be produced. She was not working in Shamgarh branch during 1998 to 2008. She claims ignorance whether Shamgarh branch is working or not working. She filed affidavit as per record. Workman was engaged for one or two hours for cleaning work. The details of payment made to the workman is not available with the management. She denied documents referred to her in cross-examination. Nothing has come in cross-examination of management's witness supporting claim about his working days. Workman was not served notice. She claims ignorance whether retrenchment compensation as paid to workman or PF was deducted. She also claims ignorance about payment of bonus. Workman has not appeared for his cross-examination. There is absolutely no evidence to support claim of workman. Therefore I record my finding in Point No.1 in Affirmative.

7. Point No.2- as workman has failed to establish his services that his services are terminated in violation of Section 25-F of ID Act, workman is not entitled to any relief. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

- (1) The action of the management of ICICI Bank Ltd. (Earstwhile Bank of Rajasthan Ltd.) in terminating the services of Shri Ramchandra S/o Shri Prabhu Lal w.e.f. 1-3-08 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2258.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडौर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 66/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/29/2007-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2258.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/29/2007-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/66/07

Shri Santosh Kumar Babulal Yadav,
Jamapara, Near Chitragupt Mandir,
Ward No. 21,
Rajnandgaon (MP) ... Workman

Versus

Asstt. General Manager(V),
State Bank of Indore, Zonal Office,
National Highway, Telibadha,
Raipur (CG) ... Management

AWARD

Passed on this 17th day of November, 2015

1. As per letter dated 25-6-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/29/2007-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of Indore in terminating the services of Shri Santosh Kumar Babulal Yadav w.e.f. 25-5-06 is legal and justified? If not, to what relief the workman concerned is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 2/1 to 2/4. Case of Ist party workman is that he was engaged as peon on daily wages by Branch Manager Shri A.K.Singh on 10-7-98. His wages were increased time to time 60,70,75,90, 100 & 110. He was working from Monday to Saturday, Sunday was holiday. He was not paid wages for Sunday. He completed more than 240 days continuous service during the year. His services were terminated without notice, retrenchment compensation was not paid to him. he worked under different Branch Managers. Workman further submits that he is covered as employee

under Section 25 B of ID Act and is eligible for regular appointment. Overlooking his service for 9 years, his services were terminated in violation of Section 25-F of ID Act. Policy of last come first go was not followed thereby violated Section 25-G,N of ID Act. After termination of his service, 2nd party engaged other persons on daily wages. Workman was not given opportunity for re-employment violating Section 25 H of ID Act. On such ground, workman prays for his reinstatement with backwages. Though in his statement of claim, workman has objected engagement of legal practitioner by management, said objection was not pressed.

3. 2nd party filed Written Statement at Page 8/1 to 8/9 opposing claim of Ist party. 2nd party submits that it is Banking company established under SBI Act 1959. It is subsidiary of State bank of India carrying banking business. The Bank has rules for recruitment of staff including peon, messenger, security guard. After public notice in newspapers, Branch manager has no authority to appoint any peon, messenger or Security Guard. The posts are also filled by transfer of sub staff. The claim of workman is based on back door entry is not legal.

4. Ist party workman was engaged for sweeping, cleaning work for 1-2 hours. The regular peons were not doing cleaning, sweeping work. Workman was paid agreed wages. He is not eligible for regular appointment. Ist party workman never carried the work of peon. He was engaged on daily wages. He had not completed 240 days continuous service during any of the year. Workman was not appointed as peon. There was no question of his termination. It is denied that workman completed 240 days continuous service during the year. He was not appointed as regular peon. His name was not included in the muster register. Ist party is not covered as workman. the provisions of ID Act are not applicable 2nd party has referred to ratio held in various cases. That workman is not entitled for regularisation. Casual, daily wages, adhoc labours cannot be regularised. Mr.Nagwansi is a dismissed employee of the Bank, he is not competent to represent the workman. On such grounds, 2nd party prays for rejection of claim.

5. Ist party workman filed rejoinder at Page 9/1 to 9/3 reiterating his contentions in statement of claim. That he completed more than 240 days continuous service during each of the year. His services are terminated without notice violating Section 33 of ID Act.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of Indore in terminating the services of Shri Santosh Kumar Babulal Yadav w.e.f. 25-5-06 is legal and justified? In Negative

(ii) If not, what relief the workman is entitled to?"

REASONS

7. Workman is challenging termination of his service for violation of section 25-F of ID Act. he filed affidavit of his evidence. Workman has contented that he was engaged as permanent peon from 10-7-78. He was working in the Bank from opening till Bank was closed. He completed more than 240 days continuous service. His services were terminated on 2-4-06. He was not served with notice of termination, retrenchment compensation. He had filed conciliation proceeding before ALC, Raipur for payment of bonus. Bonus of Rs.8578.46 was paid to him. In his cross-examination, workman says he was working in Rajnandgaon branch of the Bank from 10-7-98 to 25-5-06. He had kept written notes about it. His evidence in further cross-examination is devoted about he has 3 children, he did not recollect their date of birth. He was married on 5-5-92. At the time of evidence, he was of 40 years, his elder son was of 15 year age. He was doing work of receiving and distribution of dak. He worked under different Branch Managers. Appointment letter was not received by him. he had not appeared for any examination. The documents Exhibit W-1 is letter issued by Assstt. General Manager of the Bank for payment of bonus to 6 daily wage worker including Ist party workman at Sl.No.2. Letter Exhibit W-2 is letter issued by General Manager informing to ALC that the matter about payment of bonus was taken before the higher authorities. Exhibit W-3 is letter issued by ALC calling progress report from management of 2nd party. Exhibit W-4 is also letter issued by ALC, Raipur in the matter of payment of bonus. Exhibit W-5 is reply submitted by management before ALC denying the appointment of workman from 10-7-98. In any of those documents working days of Ist party workman are not mentioned. In document Exhibit W-6, the working days of workman are shown 157 days in 2002-03, 306 days in 2003-04, 343 days during 2004-05, 336 days during 2005-06, 42 days in 2006. The evidence of workman that he completed more than 240 days is supported by document Exhibit W-6.

8. Management's witness Dhirendra Kumar filed affidavit of his evidence supporting contentions in Written Statement filed by 2nd party that workman was engaged for 1-2 hours for cleaning, dusting work. He had not completed 240 days continuous service. The contention of workman in that regard are false. In his cross-examination, management's witness says before engaging workman, any recruitment process was not followed. Permission of Controlling Authority was not taken. Appointment letter was not issued to workman. Attendance Register of workman was not maintained. Management's witness claims ignorance how wages were paid to workman. Workman was paid wages at different rates. He claims ignorance how wages were paid to

workman. workman was paid wages at different rates. He claims ignorance about conciliation proceeding filed before ALC. Workman was paid retrenchment compensation and notice pay. Bonus was paid to workman. management's witness admitted Exhibit W-6. He claims ignorance about payment of gratuity to workman. He claims ignorance under which name workman was paid during May 99 to Sept-01. Permission of ALC was not taken for termination of workman. though management's witness in his evidence says that one months pay and retrenchment compensation was paid to workman, the documents in that regard are not produced. Evidence of management's witness is not disclosing details of the retrenchment compensation, notice pay paid to workman. evidence of workman is corroborated by Exhibit W-6. Workman completed more than 24 days during 1-4-03 to 31-3-06. Workman was not served with termination notice, retrenchment compensation was not paid to him. Termination of services of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. **Point No.2-** In view of my finding in Point No.1, services of workman are terminated in violation of section 25-F of ID Act, question remains for consideration is whether workman is entitled for reinstatement with backwages. Ist party workman in his cross-examination says appointment letter was not received by him, he not appeared for any examination before his appointment. It is clear that Ist party workman was not appointed following recruitment process. he was engaged on daily wages. The relief of reinstatement with backwages would not be justified. considering the period of working of Ist party workman with 2nd party, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of State Bank of Indore in terminating the services of Shri Santosh Kumar Babulal Yadav w.e.f. 25-5-06 is not legal and justified.
- (2) Management is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2259.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार संगली बैंक लि. (अब आई सीआई सी आई में विलय) के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक

विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोल्हापुर के पंचाट (संदर्भ संख्या 156/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12025/01/2015-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2259.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. (IDA) No. 156/2007] of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Kolhapur as shown in the Annexure in the Industrial Dispute between the management of Sangli Bank Ltd. (Now merged as ICICI Bank Ltd.) and their workman, received by the Central Government on 7-12-2015.

[No. L-12025/01/2015-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

IN THE SECOND LABOUR COURT AT KOLHAPUR

CORAM: Shri M.S.KULKARNI, Presiding Officer

Exh. O-43

Reference (IDA) No. 156/2007

BETWEEN:-

The Managing Director,
Sangli Bank Ltd.
(Now merged in ICICI Bank Ltd.)
Bandra Kurla Complex,
Bandra (Estd.), Mumbai ...First Party.

And

Shri Babaso Dhanpal Gat (Desai),
H.No. 14/A Plot No. 11, E Ward,
Vishalgadkar Area,
Near Mahaveer College, Kolhapur ...Second Party

APPEARANCES:

Shri. V. V. Nalawade & A.P.Chougule, Advocates for First party.

Shri. D. D. Desai, Advocate for Second party.

AWARD

(Dated :- 15/05/2014)

Second party workman who was working as a 'Agricultural Assistant' in the then Bank namely Sangli Bank which is now taken over by ICICI Bank – [hereinafter referred as the First party,] issued demand notice under section 2(A) of the Industrial Disputes Act, 1947 [hereinafter in short called as I.D.Act only] to the First

Party to set aside his termination dt. 30.10.2003 and take him on duty.

2. As there was no positive respond, Second party approached Conciliation Authority of Central Government, where there was no settlement. So by an order dt. 05.12.2007 Central Government referred the dispute to this court for adjudication. Notices were issued to both parties. Second party workman filed his Statement of Claim at Exh. U-8. While there is written statement from the side of First party at Exh. C-12.

3. Before touching to the rival contention of both parties, there is need to note some admitted facts, which are as :

The First Party has its one of the branches at Tasgaon, Dist. Sangli. Second party workman was attached to the said branch as a 'Agriculture Assistant' in the year 2002. In the said branch, there was one staff member namely Mr. Dilip Namdeo Hingmire. On 05.12.2002 Mr. Dilip Hingmire arranged party for his colleagues in the hotel namely 'Pancharatna' situated within the limit of same village. Second party workman was on relevant date on leave. He even did not participate in the said party. The party which was inclusive of liquor, veg, non-veg food items, was attended by 6 colleagues of Mr. Hingmire. Party ended at about 8 to 9 p.m. After party, except Mr. Hingmire and one Peon namely Mr. B. N. Khokade, all other participants left for their respective residence. Mr. Hingmire and Mr. Khokade then came at one hotel namely 'Pranav Garden' situated within the limits of same village, where there was Second party workman. On next date i.e. 06.12.2002 Second party workman handed over Bank keys which were supposed to be with Mr. Hingmire, as it was his duty to open the bank, along with his (Mr. Hingmire's) Senior Officer (special assistant) Mr. S.R.Kulkarni who had participated in last day party. Mr. Hingmire was not traceable for 2 to 3 days. His dead body was found in one well owned by Mr. Khade of village Kawathe Ekand which is near about 6 to 7 kilometers away from Tasgaon. In connection of death of Mr. Hingmire, Second party workman and B.N.Khokade were arrested on 23.12.2002 by Tasgaon Police Station. News to that effect was flashed in broad language near about in all Marathi news papers circulating within Sangli district. First Party taking this fact, as amounting to tarnish it's image as well as prejudicial to it's interest, suspended Mr. Khokade and Second party workman on 07.02.2003. So far as Second party workman is concern, he came to be issued charge-sheet dt. 11.02.2003 which was issued as per Bipartite settlement dt. 19.10.1966 alleging two misconducts as [which are recorded as there are] :

- i. you acted prejudicial to the interest of bank, and
- ii. you tarnish/ damage the image of bank in the eyes of Public.

4. Second party replied charge-sheet on 20.02.2003 denying the fact that, he was involved in any way in death of Late Hingmire. Enquiry was initiated against Second party workman by appointing Enquiry Officer namely Mr. S. J. Bagalwade. One Mr. V.V. Kulkarni was appointed as Presenting Officer by the First Party. In the enquiry, First Party examined three witness namely Mr. R.H. Ruikar – Deputy Regional Officer, Regional office, Sangli ; Mr. S.R. Kulkarni – Special Assistant attached to Tasgaon branch; and Mr. D.S. Shikar – Manager of the Tasgaon branch. Second party workman when was asked by Enquiry Officer on 28.05.2003, whether he is going to examine witness in his defence, Second party workman submitted that, he did not want to examine any witness from his side. But his reply given to the chargesheet which was already on record be treated as his defence. Enquiry Officer submitted his report on 7th August 2003 to the First Party. First party sent the report for explanation to second party workman on 29.08.2003. Second party workman gave reply to the said report by a letter dt. 06.09.2003 denying the findings recorded by Enquiry Officer. Second party workman was again given letter dt. 25th September, 2003 asking him to give reasons, why he should not be dismissed from the services? Thereafter by an order dt. 30th October 2003 Second party workman came to be terminated from the services. Prior to that, on 3rd October 2003 Second party workman replied the show-cause notice dt. 30th October 2003. Second party workman, against order of termination preferred Departmental Appeal on 04.12.2003 wherein Second party workman was given personal hearing. He had put his side by way of written notes on 02.02.2004. Appellate Authority but dismissed the Appeal by an order dt. 23rd September 2004. Second party workman then came to be acquitted from the charge of murder of Late Hingmire by an order dt. 09.06.2005. So, on 31.10.2005 he requested the First Party by issuing demand notice to reinstate him, which came to be denied by letter dt. 17.12.2005. Thereafter there was conciliation proceeding. On its failure, as stated above, the dispute is before this court.

5. In the above background, so far as the legality of enquiry and findings therein are concern, Second party workman contends that, First party had instead of issuing him charge-sheet, to wait for the decision from the Session Court. Issuance of the chargesheet was itself illegal. Both the charges leveled against him are not at all applicable to the situation, exaggerated on the basis of news flashed in the newspapers. The alleged situation based on the news flashed as, does not at all come under the purview of interest and image of the First party. Hence, the charges leveled against him are false, frivolous, baseless and illegal. They are not at all concern or they do not have any nexus with the duties and responsibility of him as well as service conditions applicable to him.

6. Second party workman further contends that, during enquiry, to prove the charges, internal correspondence,

documents prepared by the police and the copies of the news flashed in the newspaper were produced. But none of the documents were proved in the enquiry. The documents did not disclose that the interest and image of the Bank was suffered. The three witnesses examined by the Bank also did not prove the charges leveled against him. His evidence by way of reply was before Enquiry Officer. He was not cross-examined. So, said evidence was unchallenged. Enquiry Officer did not consider the said evidence. Enquiry thus conducted against him was against principles of natural justice. Findings of the Enquiry Officer are perverse.

7. First party on the other hand challenges this contention of Second party workman in the words that, this court can't go beyond the terms of the Reference. The terms of the Reference are misconceived and erroneous, because the services of the Second party workman is not terminated for the charges of involving in the alleged murder of his colleague Late Hingmire. The charges leveled & proved against second party workman are totally different which were as per the bipartite agreement. As this Reference is bad in law, it deserve to be dismissed on this point only. Second party workman may have been acquitted by the competent court for the offence under Indian Penal Code, but it has no connection with his dismissal from the services. No enquiry was initiated against Second party workman for an offence under the I.P.C., but it was initiated as per the provisions of bipartite agreement applicable to staff. Independent enquiry forum for that purpose was constituted. Thus, the First party has taken independent action against Second party workman in the capacity of the employer. During enquiry, Second party was given sufficient opportunity to defend himself, but he refrained himself from entering into the witness box. Even he did not take cross examination of First party witness Mr. Ruikar. Enquiry was conducted in consonance with the principles of natural justice. The Enquiry Officer has recorded his findings on the basis of evidence recorded during enquiry and the documents produced on record. So, these findings cannot be termed as illegal.

8. Court has framed issues at Exh. O-29. First of these two issues regarding the legality of enquiry and perversity of findings are decided by the court by part one award dated 13-02-2014. Court recorded findings in concern of both issues against first party holding that enquiry was not in consonance with the principles of natural justice and findings recorded therein are perverse. The first party was hence given opportunity to lead evidence before Court to justify it's action to terminate the second party workman from service. Till 24.04.2014 first party did not come before Court to lead evidence to justify action as stated above. So Court passed an order closing it's evidence. Thereafter on 02.05.2014 second party workman filed on record his evidence closure pursis. On the same date second party

workman put on record written argument. Matter was before court again on 08.05.2014. On relevant date also, first party did not come before Court. Today also, till this moment i.e. 2:45 p.m., first party is not before Court despite repeated calling. So matter is taken for final judgment. Now remaining issues are for my consideration. I give my findings against them for the reasons stated below.

No.	ISSUE	FINDINGS
3.	Is it proved that first party illegally terminated services of second party as alleged?	In the affirmative
4.	To what reliefs the second party is entitled for?	Second party workman is entitled for reinstatement with continuity of service and all consequential benefits with 30% of back wages.
5.	What order?	Reference is answered in the affirmative.

REASONS

ISSUE NO. 3 :-

9. As stated above once the Court held that enquiry against the workman was held against principles of natural justice, and on that count it is vitiated, further the findings recorded by Enquiry Officer are unjust and perverse, the employer is bound to justify before Court the action taken against the workman. The Court has passed Part-I Award on 13-2-2014 making clear that enquiry conducted against the second party workman is vitiated. Further findings recorded thereunder are perverse. Thereafter till 24-4-2014 there was two month time for first party to approach proper forum against the said judgment otherwise to lead evidence before Court to justify the action. There is no Writ from the Superior Court staying the proceeding. There is no evidence before Court to justify the action. In such situation it has to be held that the dismissal of complainant by order dated 30-10-2003 is illegal. So this issue is answered in the affirmative.

ISSUE NO. 4 & 5 :-

10. As Issue No. 3 is answered in the affirmative, the second party is entitled for reinstatement with continuity of service and for all consequential benefits.

11. Now there is the question of back wages. It is well established legal position through judgment of the Hon. Apex Court in the case of Kendriya Vidyalaya Sangathan & Anr. v. S. C. Sharma [2005(1) Bom.LC 598 SC] and judgments of Hon. Bombay High Court in the cases (i) Principal, Daund Taluka Arts & Commerce College, Daund & ors. v. Macchindra Sahebrao Bhavar & Anr. [2009(1) Bom. LC 610], (ii) Zilla Parishad, Gadchiroli & Anr. v. Prakash s/o Nagorao Thete & Anr. [2009(4) Mh.L.J. 628] that workman has to plead and prove that he has been

unemployed during termination. In the statement of claim, second party initially nowhere stated that he has been unemployed since termination.

12. But by way of amendment which is affected in the year 2013, second party has introduced in the statement of claim that since termination he has been unemployed. But the next important fact is that, workman has at least to depose the said fact on oath before court. But here in this case second party has not deposed this fact on oath.

13. No doubt there is no evidence from first party that second party workman has been employed or has a sufficient income to run his family. But considering the fact that the second party has been illegally terminated showing him to have been involved in the murder of colleague Mr. Dilip Namdeo Hingmire, he is entitled for at least 30% Back wages. So these issues are answered accordingly.

14. Reference thus deserves to be answered partly in affirmative and in the result I proceed to pass following Award.

AWARD

1. Reference is answered in affirmative.
2. It is hereby declared that First party has illegally terminated the services of second party workman.
3. The termination order dated 30.10.2003 is set aside.
4. First party is hereby directed to reinstate the second party in his original post with continuity of service and consequential benefits.
5. Further first party is directed to pay 30% of back wages to second party workman considering in mind that he has been awarded with consequential benefits.
6. No order as to costs.
7. Inform to the Government.
8. Award accordingly.

Place : Kolhapur

Date : 15.05.2014

M. S. KULKARNI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2260.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 19/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/63/2006-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2260.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Kshetriya Gramin Bank and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/63/2006-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/19/2007

Shri Rajendra Pagare,
s/o Shyamlal Pagare,
R/o Nehru colony,
Distt. Harda.(MP) ...Workman

Versus

The Chairman,
Kshetriya Gramin Bank,
Head Office, Mangalwara,
Hoshangabad (MP) ...Management

AWARD

Passed on this 9th day of November, 2015

1. As per letter dated 23-1-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/63/2006-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Chairman, Kshetriya Gramin Bank, Hoshangabad in terminating the services of shri Rajendra Pagaare as Authorised collection Agent w.e.f. 14-2-2004 is legal and justified? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/4. Case of Ist party workman is that he was initially appointed as authorized Collection Agent from 13-1-98. Appointment Letter was issued by Chairman of 2nd party Bank. After his appointment, Ist party workman was honestly working without any complaints. He rendered service more than 5 years as Collection Agent. His services were terminated from 14-2-04 by issuing public notice in newspaper. Workman submits that he completed more than 240 days service during each of the year. His services are terminated in violation of Article 311 of the

constitution. His services were terminated without showcause notice. On such grounds, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 7/1 to 7/5 opposing claim of the workman. 2nd party submits that the kshetriya Gramin bank Hoshangabad was constituted under Regional Rurl Bank 1976, it was sponsored by Central bank as per Notification dated 1-6-06. The Bank was amalgamated in Sutpura Kshetriya Gramin bank. Mini deposit Collection scheme known as Gramin Mini Deposit Scheme. The scheme contemplated collection of small amount from the persons desirous of making daily deposits in the Bank. For purpose of collection of amount, the management needed persons and appointed agents on contract basis. Workman was entitled for 2 % amount on collection amount made by him. Ist party was not appointed as Bank employee. The collection scheme was found uneconomical, not viable as the rates of interest were changed from 13 % to 5.5 % etc. the Bank closed the scheme. The workman was also discontinued. As collection scheme was closed, Ist party workman had not completed more than 240 days. Provisions of ID Act, article 311 of the constitution are not applicable. Disengagement of Ist party is covered under Section 2(oo)(bb) of ID Act. As the collection scheme is closed, workman is not entitled for reinstatement.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chairman, Kshetriya Gramin Bank, Hoshangabad in terminating the services of Shri Rajendra Pagaare as Authorised collection Agent w.e.f. 14-2-2004 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

5. As per pleadings between parties, engagement of Ist party as Collection Agent and termination of his service are not in dispute. Parties are in dispute that Ist party is not covered as workman under Section 2(s0 of ID Act as he was not appointed as Bank employee. Workman was engaged on contract basis. He was paid 2 % commission for all amount collected by him. workman filed affidavit of his evidence supporting his contentions in statement of claim. Workman contends that he completed more than 240 days service his services were terminated without notice. He was working with 2nd party as Collection Agent from 13-1-98 to 14-2-04.

6. The documents are produced Exhibit w-1 is appointment of 1st party workman as Collection Agent, 2 % commission to be paid on amount collected by him. Exhibit W-2 is public notice to make any transaction with Commission Agent. Exhibit M-1 is copy of the Mini Collection Scheme introduced by the Bank. M-2 is copy of appointment order for said collection scheme. Exhibit M-3 is the scheme as to what work the commission agent was required to carry out. Parties are not in dispute on facts that 1st party was working as Commission Agent from 1998 to 2004. Though 2nd party has contented that the workman had not completed 240 days continuous service, the details of absence of workman from duty are not produced by 2nd party.

7. Management filed affidavit of evidence of Rakesh Suri, his affidavit is also silent about the period 1st party was not doing his work. Rather his affidavit is devoted supporting contentions of 2nd party in Written Statement. That certain incidents of fraud by Commission Agent were introduced, matters were reported to police. In his cross-examination, witness admits that from 1998 to 2004, 1st party was assigned work of Commission Agent. It supports the claim of workman that he continuously worked during said period. The evidence in cross-examination of management's witness is also clear that workman had worked more than 240 days during each of the year.

8. The controversy between parties that workman was engaged as Commission Agent and he is not covered as workman under Section 2(s) of ID Act. On the point, reliance is placed on ratio held in

Case of Indian Banks Association versus workmen of Syndicate Bank and others reported in 2001(3)SCC-36. Their Lordship of the Apex Court dealing with scope of Section 2(s) of ID Act in the context of commission agent held the relationship of master servant did not exist between the bank and person engaged on commission. The words and phrases "Workmen" Master and servant relationship. Their Lordship held Banking Regulation Act did not bar employment of persons on commission.

Ratio held in above cited case supports claim of 1st party that he is engaged as workman under section 2(s) of ID Act. services of workman are terminated without notice on the ground that scheme was closed. The controversy is covered under Section 25-FFF. Workman is not paid compensation under Section 25-FFF of ID Act when Collection Scheme was closed by the Bank. Copy of award in R/111/05 is produced on record. In said reference, my colleague had held that workman was covered under Section 2(s) and after closure of collection scheme, workman was entitled for compensation under Section 25-FFF of ID Act, management was directed to pay compensation under said section. In present case, evidence of parties is clear that when collection scheme was closed by the Bank, compensation under section

25-FFF of ID Act was not paid. 1st party working as Commission Agent is entitled to compensation under Section 25-FFF of ID Act. workman was not paid compensation under said section. Therefore action of management is not proper and legal. For above reasons, I record my finding in Point No.1 in Negative.

9. **Point No. 2-** In view of my finding in Point No.1 action of the management is not legal, question arises whether workman is entitled for reinstatement with backwages. There is no dispute that workman was engaged as Commission Agent. He was entitled to receive 2 % commission amount. As collection scheme is closed, workman cannot be reinstated. however he is entitled to compensation under section 25-FFF of ID Act. Accordingly I record my finding in Point No. 2.

10. In the result, award is passed as under:-

- (1) The action of the management of Chairman, Kshetriya Gramin Bank, Hoshangabad in terminating the services of shri Rajendra Pagaare as Authorised collection Agent w.e.f. 14-2-2004 is not proper and legal.
- (2) 2nd party is directed to pay compensation under Section 25-FFF of ID Act and cost of this proceeding Rs.2000/- be paid within 30 days 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2261.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 102/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/82/2002-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2261.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/02) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/82/2002-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/102/02**

Shri Ramnarayan Namdeo,
S/o Shri S.L.Namdeo,
At Bandhwatola, PO Biltikuri,
Shahdol (MP) ...Workman

Versus

Asstt. General Manager,
State Bank of India,
Region-IV, Jabalpur ...Management

AWARD

Passed on this 2nd day of November, 2015

1. As per letter dated 10-7-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-12012/82/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the State Bank of India through the Asstt. General Manager, SBI Region IV in not reinstating to Shri Ram Narayan Namdeo is justified? If not, what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman after issuing notice, submitted statement of claim at Page 3/1 to ¾. Case of Ist party workman is that he was appointed on daily wage by Dy. Manager Kotma Branch on 17-11-87. He continuously worked till June 90. Thereafter in July 1990, Branch Manager in Jamuna colliery branch appointed him. He was continuously working in said branch till 25-12-98. That he worked more than 240 days during each of the year since 1992. That he is covered as employee under Section 25 B of ID Act. His services were orally terminated from 25-12-98 by Branch Manager without assigning any reasons. He raised dispute between ALC Shahdol. After failure of conciliation proceedings, dispute is referred.

3. Workman further submits that he worked for 132 days during 1987-88, 31 days in 1989. He was engaged on daily wages. He was not served notice of termination, compensation was not paid in lieu of notice. He was performing work of messenger and Daftary as per direction of the Manager. His service record was excellent. His services were appreciated by Colliery Manager. Management in its comment dated 7-9-01 before ALC admitted Ist party workman worked during 1987 to 1998. That workman completed 240 days continuous service. That termination of his service amounts to retrenchment under Section 2(oo) of ID Act. His services were terminated in violation of Section 25-F of ID Act, therefore termination

of his service is illegal. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement at Page 13/1 to 13/10 opposing claim of workman. 2nd party did not dispute that workman had worked for 132 days in 1987-88 and 31 days in 1989. Working days of workman from 1990 to 1998 are shown in para 1 of Written Statement. Working days of workman from 1992 to 1998 are shown more than 240 days. 2nd party submits that said engagement of Ist party could not be considered as employment in Bank as his engagement was purely contractual. Workman was engaged on contract basis. His engagement was as per exigency of work. He was not required to report for work. He was free to come on next day, his non-engagement is covered under Section 2(oo)(bb) of ID Act.

5. 2nd party further submits that there is elaborate selection procedure out evolved out of the agreement entered into between SBI and All India State Bank of India Staff Federation. That management provided opportunity to the temporary casual workers for permanent appointment in Bank service. As per settlement dated 17-11-87, temporary employee completing 240 days continuous service in block of 12 months or less after 1975 shown in Category A, temporary employees completing 270 days in block of 36 calendar months after 1-7-75 are shown in Category B, temporary employees completed a minimum of 30 days temporary service in any calendar after 1975 or a minimum of 70 days aggregate temporary service in any continuous block of 36 months after 1-7-75 are shown in Category C. 2nd party submits that the settlement dated 17-11-87 was modified by subsequent settlement dated 16-7-88, 27-10-88, 9-1-91, 30-1-96. As per settlement dated 9-1-91, the absorption of daily wagers can be made against vacancies arise from 1995 to 1996. Ist party workman submitted application for permanent absorption as he did not work during stipulated period. He was not called for interview. That engagement on daily wages on casual basis does not give him right for regularization. Workman was engaged on contract basis. He was paid wages. Workman was not in continuous employment of the Bank. Engagement of workman was purely on contract basis commanding on the opening hours of the Bank and ended with closing hours of the Bank. It is reiterated for non-engagement of workman is covered under Section 2(oo)(bb) of ID Act. workman was engaged on contractual basis. The action of management is nor arbitrary. The wages of Ist party were settled prior to his engagement. Violation of provisions of ID Act is denied.

6. Workman filed rejoinder at Page 18 reiterating his contentions in statement of claim. That his services are terminated without notice in violation of Section 25-F of ID Act.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the State Bank In Negative of India through the Asstt. General Manager, SBI Region IV in not reinstating to Shri Ram Narayan Namdeo is justified?

(ii) If not, to what relief the workman is entitled to?"

REASONS

8. As per pleadings in Written Statement, working days of workman 132 days in 1987-88 working from 17-11-87, 31 days in 1989 and more than 240 days during 1992 to 1998 are not disputed. Since 1992, 1st party workman was in continuous service for more than 240 days. Copy of settlement is produced by 2nd party at Exhibit M-1 to M-5. Exhibit M-1 shows temporary employee completing more than 240 days continuous service during 12 months or less after 1-7-75 or (ii) 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75, (iii) minimum of 30 days aggregate temporary service in any calendar year after 1-7-75 or 70 days in any continuous block of 36 calendar months after 1-7-75 are eligible for absorption. The period of settlement was changed time to time. There is no dispute between parties that workman was engaged from 17-11-87.

9. Workman filed affidavit of his evidence supporting his contentions that from 1992, he worked more than 240 days. His services were terminated by Branch manager from 25-12-98 without assigning reasons. His affidavit is devoted about the details of conciliation proceeding before ALC. His services were terminated without notice. From evidence of workman, documents Exhibit W-1 to W-6 are proved. Workman in his cross-examination says except Kotma Jamuna branch, he did not work in any other branch. He was working as messenger. The documents Exhibit W-1, W-2 were prepared as per direction of Jabalpur office. He claims ignorance about the settlements. Exhibit W-1 shows working days of workman 132 days during 1987-88, 31 days in 1989. The working days are already admitted by 2nd party. In Exhibit W-2 & 7, working days of workman are shown. The working days are also admitted by 2nd party. Though workman completed 240 days service during 1990 to 1998, as per affidavit of evidence of management's witness Mahesh kumar, his services were orally terminated without notice. Termination of service of workman is in violation of Section 25-F of ID Act, therefore I record my finding in Point No.1 in Negative.

10. **Point No.2-** In view of my finding in Point No.1 workman is terminated illegally in violation of Section 25-F, he was not paid retrenchment compensation, he was not served with notice of termination, question arise whether workman is entitled for reinstatement with backwages. As per pleadings and evidence on record,

workman was working on daily wages with 2nd party from 1987. The working for 132 days in 86, 31 days in 1989. Thereafter he was working intermittently till 1992. From 1992 to 1998, he was continuously working more than 240 days. For long period, workman was engaged by 2nd party on daily wages, it amounts to unfair labour practice under Item 10, schedule V of ID Act.

11. Learned counsel for 2nd party Shri Ashish Shrotri submits that workman was not appointed following selection process, his name was not sponsored through Employment Exchange. Instead of reinstatement, workman be allowed appropriate compensation. Shri Prem Jaiswal, Advocate for workman submits that considering long period of working, workman be allowed reinstatement with backwages. In support of his argument, learned counsel relies on ratio held in case between-

Mackinnon Machenzie and Co.Ltd versus Machinnon Employees Union reported in 2015-2-SCCL&S-66. Their Lordship dealing with violation of Section 25-F G held action of appellant company was not clear breach of conditions precedent for retrenchment of workmen, rendering retrenchment illegal/invalid. Principle of last come first go was not followed. Renders retrenchment unsustainable. Their Lordship considered contention by appellant company that workmen concerned could not be reinstated and/ or backwages paid to them since department unit of appellant company where they were employed was no more in existence and hence relief of reinstatement and backwages granted by courts may be moulded. The Lordship held High Curt cannot sympathise with a party which gambles in litigation to put off the evil day and when that day comes prays to be saved from its own gamble. Hence moulding of relief not permissible. Reinstatement of workman was upheld.

Next reliance is placed in ratio held in case of Ajay Pal Singh versus Haryana Warehousing Corporation reported in 2015(20) SCC (L&S) 279. Their Lordship observed appellant workman within the meaning of Section 2(s) was employed by the respondent public sector Corporation which is an Industry within the meaning of Section 2(j) of ID Act. The appellant had completed more than 240 days of service in preceding 12 calendar months w.e.f. 1-7-88 without notice of pay in lieu thereof in terms of Section 25-F of ID Act. Labour court by its award dated 11-8-93 held that the termination of service of the appellant was illegal and he was entitled to be reinstated with full back wages. In Para 24 of the judgment, their Lordship observed in present case, the services of the appellant was not terminated on the ground that his initial appointment was made in violation of Article 14 & 16 of the constitution of India. No such reasons were shown

in the order of retrenchment nor was such plea raised while reference was made by the appropriate government for adjudication of the dispute between the employee and the employer. In absence of such ground, it was not ground to deny the benefit for which the appellant was entitled on ground that his initial appointment was made in violation of Article 14,16 of the constitution.

In present case, parties are in dispute that parties are engaged on daily wages. There are no pleadings about legality of initial appointment of workman.

12. Learned counsel for workman Shri Jaiswal also relies on ratio held in

Case of Deepali Gundu Surwase vrs Kranti Junior Adhyapak and others, though the facts were different, their lordship allowed full back wages.

13. Learned counsel for 2nd party Shri Shrotri submits that workman has not pleaded about unfair labour practice on part of management. The workman was engaged on daily wages. He has no right to continue on the post. On the point of reinstatement, reliance is placed on ratio held in

Case of BSNL versus Bhurumal reported in 2014(7) SCC-177. In Para 33, their Lordship observed however it come to the case of termination a procedural defect, namely in violation of section 25-F of the IID Act, this Court is consistent in taking the view that in such cases reinstatement with backwages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice.

In para 35, their Lordship observed we would however like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last first go while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

Shri Shrotri also relies on ratio held in case of BSNL and others versus Kailash Narayan Sharma reported in 2014(16) SCC-440. In Para 6 of the judgment, their Lordship discussed we have bestowed our consideration to the rival submissions and we find substance in the submissions of the learned counsel

for the appellants. The decisions of this Court referred to above in no uncertain terms hold that in case of termination in violation of Section 25-F of the ID Act, relief of reinstatement may not be the natural consequence. It will depend upon the facts and circumstances of each case. It is not automatic. In the facts of a given case, instead of reinstatement, monetary compensation can be granted.

No cogent evidence is adduced by workman about junior to him is regularised or continued in service. Considering ratio held in 2014(7) SCC-177, it would be appropriate to award reasonable compensation to the workman instead of reinstatement with backwages. The pleadings and evidence on record shows that workman was continuously working more than 240 days from 1992 to 1998, prior to it, he was working intermittently from 1987, compensation Rs. 2,50,000/- would be appropriate. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) The action of the State Bank of India through the Asstt. General Manager, SBI Region IV in not reinstating to Shri Ram Narayan Namdeo is not proper and legal.
- (2) Management is directed to pay compensation Rs.2,50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2262.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रिवा सिदी ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 133/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/138/98-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2262.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Rewa Sidhi Gramin Bank and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/138/98-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/133/99**

Shri Krishna Kumar Sen
s/o Shri H.S.Prasad Sen
Vill. Tendun, PO Baikunthpur,
Tehsil Sirmasur, Rewa (MP) ...Workman

Versus

The Chairman,
Rewa sidhi Gramin Bank,
RSGB Gurunanak Market,
Rewa (MP) ...Management

AWARD

Passed on this 20th day of November, 2015

1. As per letter dated 18-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-12012/138/98/IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Rewa Sidhi Gramin Bank, Gurunanak Market Rewa (MP) in not providing duty as messenger in the Bank to Shri Krishna Kumar Sen S/o Shri H.S.Prasad Sen is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/2. Case of Ist party workman is that he was employed as messenger on vacant post on 28-4-95. He continuously worked till 3-1-97. Management terminated his services suddenly on 3-1-97 in violation of Section 25-F of ID Act. That workman was continuously working with 2nd party which is covered as employee under Section 25 B of ID Act. He was not paid retrenchment compensation. Section 25 G, H of ID Act were not followed by 2nd party. Permission of Government for his retrenchment was not obtained by the management. Junior persons working in the Bank were retained. Termination of his service amounts to retrenchment under Section 2(oo) of ID Act. It also amounts to unfair labour practice.

3. 2nd party filed Written Statement at Page 8/1 to 8/5 opposing claim of workman. Preliminary objection is raised that Government was not entitled to make reference. While making reference, Government decided employer employee relationship exists between parties, workman was terminated. Reference is illegal. Termination of workman was highly disputed question. 2nd party further submits that workman was engaged by extension counter of the Bank on daily wages Rs.42.27. The workman was

intermittently working on daily wages on extension counter for sweeping cleaning work of the premises during leave period of regular staff. Ist party was not given permanent appointment by Bank. He was not continuously working as per Section 25 of ID Act. Workman had not completed more than 240 days continuous service. Workman was engaged on daily wages. The contract of appointment begin in morning and ends at end of the day. The non-engagement of workman is covered under Section 2(oo) (bb) of ID Act. It does not amount to retrenchment. 2nd party denied violation of Section 25-F of ID Act. Workman is not covered under Section 25 B of ID Act. Directions of Central Government provides that employment of cadre of sub staff could be done through Employment Exchange only. 2nd party submits that the candidates sponsored by Employment Exchange after notification of vacancies are to be considered for regular appointment. That Bank employment is public employment covered under Article 16 of the constitution. Any person seeking employment can register with the Employment Exchange. The person who is engaged purely on temporary basis as staff gap arrangement without following such procedure to be appointed permanently. 2nd party reiterates workman is not covered under Section 25 B of ID Act. Violation of Section 25-F,G,H of ID Act is denied. There was no question of taking permission for retrenchment of workman. On such ground, 2nd party prays for rejection of claim.

4. Ist party filed rejoinder at Page 10/1 to 10/2 reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

“(i) Whether the action of the management of Rewa Sidhi Gramin Bank, Gurunanak Market Rewa (MP) in not providing duty as messenger in the Bank to Shri Krishna Kumar Sen S/o Shri H.S.Prasad Sen is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

6. Ist party workman is challenging termination of his services from 3-1-97 for violation of Section 25-F, G, H of ID Act. Workman filed affidavit of his evidence at Page 11 contending that his contentions in rejoinder are correct. It appears said affidavit was accepted as affidavit of his evidence and workman was cross-examined in detail. In his cross-examination on said affidavit, workman says appointment letter was received by him from President Shri S.K. Gupta. His name was not sponsored through

Employment Exchange. He was not interviewed. He was engaged on daily wages Rs.42.27. he was working during whole month except Sundays. He denies that he had personal relation with Shri S.K.Gupta, President and therefore he was appointed. He claims ignorance about any action taken against Shri S.K.Gupta but ultimately Shri S.K.Gupta was dismissed. That he was doing work of writing Day Book, checking OBC Register, handling stationery as per directions of Shri R.K.Dubey Manager. One post of messenger was vacant. That he was engaged in the branch.

7. Workman again filed affidavit of his evidence. Workman has stated that he was appointed on vacant post of messenger in the extension branch on 28-4-95. He continuously worked till 3-1-97. He completed more than 240 days continuous service during each of the year. He has produced appointment order of his appointment. He was appointed following selection process. His services were terminated without notice. Retrenchment compensation was not paid to him.

8. In his cross-examination, workman says certificate about his working was not issued. He claims ignorance about rules of recruitment of Bank. He was engaged on daily wages. He denies that as he has personal relations with Shri S.K.Gupta, he was engaged in the Bank. Shri S.K.Gupta was President of the Bank. He was working in extension counter. He denies that he was engaged in extension counter as per requirement. He denies that he worked for 190 days during the period 27-4-95 to 31-12-96 only. He denied regulations of the Bank shown to him. He claims ignorance under which rules, he was appointed. He claims ignorance whether Shri S.K.Gupta was served with chargesheet and for what reasons Shri S.K.Gupta was dismissed.

9. Management filed affidavit of evidence of Shri Y.S.Bundela. management's witness supports contentions in Written Statement filed by 2nd party that 2nd party Bank was established under Regional Rural Bank Rules 1998. Chairman of Bank is not authorized to fill the vacancies. The appointment order is totally illegal and invalid. Workman was engaged by extension counter on daily wages Rs. 42.27. he was not given permanent appointment in the Bank. Workman was not continuously working in Bank. Workman not completed 240 days continuous service during any of the year. The offer of appointment was given by Shri S.K.Gupta. due to several irregularities committed by him, he was removed from service. In his cross-examination, management's witness says he was working in the Bank from 1-7-98. Workman was not working in the Bank during said period. Workman was working in extension counter at Sarasvatipuram. The Bank may have entries about it. Workman was working on daily wages. He was unable to tell the period of his working without going through record. Management's witness denies that workman was continuously working

from 1995 to 1997. Appointment letter dated 20-9-96 issued to workman was contrary to rules. Daily wages employees were not issued order in writing. They used to be engaged orally. Workman was not paid retrenchment compensation, termination notice was not issued to him. Management's witness was re-examined and documents Exhibit M-1 to M-6 were admitted in evidence. In his cross-examination, management's witness says Exhibit M-1 to 4 pertains to services of regular employees. Exhibit Receipt M-5 was obtained from workman. He admits that Exhibit M-6 was given to Shri S.K.Gupta working as Manager. Shri S.K.Gupta was working as Chief Manager in Rewa Sidhi branch. Workman was paid wages under voucher. He claims ignorance about the manner of payment of wages to workman. At fag end of his cross-examination, management's witness says the vouchers of the period 1995 to 1997 may be available in the Bank.

10. The evidence of management's witness Shri V.K. Mishra is on the point that workman had not completed 240 days continuous service. Workman was engaged during leave period. Workman was not appointed by Competent Authority. Working days of 1st party are shown 198 days from 27-4-95 to 12-12-96. In his cross-examination, management's witness Shri V.K.Mishra says he was posted in Sidhi branch during 3-7-95 to 30-6-98. The services of workman were taken on daily wages. He was doing work of sweeping, supplying drinking water. Workman was given intermittent breaks. After December 96, services of 1st party workman were not utilized. He denies that workman was in service on 4-1-97. Management's witness admitted Exhibit W-1, W-2. Workman was engaged on need basis. Documents in that regard were not maintained.

11. Turning to documentary evidence, Exhibit W-2 is letter of appointment to workman as temporary messenger/sweeper dated 20-9-96. Period of working is not shown in the documents. Exhibit W-1 is copy of receipt given by workman. Working period is shown from 28-4-95, 23-12-96 to 23-12-96, 26-12-96 to 28-12-96, 30-12-96 to 3-1-97 on wages Rs. 42.27. document doesnot show that the workman had continuously worked for 240 days. Exhibit M-1 is copy of Notification dated 20-9-88 pertains to rules of the Bank in appointment and promotion of officers and other employees. The evidence of workman is clear that he was engaged on daily wages. Selection process was not followed before engaging him by the Bank. Exhibit M-2 is Circular dated 9-5-96. M-3 is letter dated 15-6-99. Clarification in the matter of promotion of employees/ officers. M-4 is also clarification in the matter of promotion of employees and officers. The contents in those documents donot support the claim of workman. Exhibit M-6 is order of suspension of Shri S.K.Gupta dated 23-9-96. Exhibit M-7 is order of his removal followed by enquiry. The documents on record are not clear that workman was continuously more than 240 days during 12 months preceding termination of workman.

12. Learned counsel for workman Shri Aditya Ahiwasi during course of argument pointed out my attention that workman filed application for production of documents. Application was opposed by management filing reply claiming that the documents were not available. The same were destroyed. Management's witness Bundele in his cross says te documents may be in the Bank and therefore adverse inference be drawn against 2nd party. Management's witness Bundele is not telling truth above argument cannot be accepted as in his cross-examination, management's witness Bundele have not admitted documents are in the Bank rather he claims that documents may be in the Bank. His affidavit filed in reply to application for production of documents dated 17-4-2008. As stated that documents cash vouchers, ledger and stationery challan for the period 27-4-95 to 31-11-97 called by workman. As per directions in circular dated 14-12-2002, documents are not preserved more than 9 years. The stationery challan or petty vouchers are not kept more than one year. The cash vouchers, ledger and day book within period of 9 years from 2008 are available with the management. Said documents being bulky . management is unable to produce same before Tribunal.

13. After considering submissions of production, application for production of documents are rejected as per order dated 20-10-2008. In view of above facts, arguments advanced by Advocate Aditya cannot be accepted. There is no cogent evidence to establish workman completed more than 240 days continuous service preceding 12 months of his termination violation of Section 25-F is not established. Therefore I record my finding in Point No.1 in Affirmative.

14. **Point No.2-** In view of my finding in Point No.1 termination of workman is not illegal for violation of Section 25-F, G, H of ID Act is not established.

15. Learned counsel for workman Shri Aditya Ahiwasi relied on ratio held in 2015(4)MPLJ-5 & 2014(15)SCC-313. Ratio held in above cases needs no detailed discussion as workman has failed to establish termination of his service in violation of Section 25-F,G,H of ID Act, therefore workman is not entitled to any relief. Accordingly I record my finding in Point No.2.

16. In the result, award is passed as under:-

- (1) The action of the management of Rewa Sidhi Gramin Bank, Gurunanak Market Rewa (MP) in not providing duty as messenger in the Bank to Shri Krishna Kumar Sen S/o Shri H.S.Prasad Sen is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2263.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के

प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 160/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-41012/49/2000-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2263.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 160/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Railway and their workman, received by the Central Government on 7-12-2015.

[No. L-41012/49/2000-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/160/2000

Shri Rubbilal S/o Shri Sumera Mukam
Bahar Post Taral Thana Sihora
Distt. Jabalpur (MP) ...Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur (MP) ...Management

AWARD

Passed on this 18th day of November, 2015

1. As per letter dated 29-8-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-41012/49/2000/IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Central Railway, Jabalpur (MP) in terminating the service of Shri Rubbilal S/o Shri Sumera, Ex. Parcel Porter MRCL w.e.f. 18-12-84, while he has worked from 9-2-97 to 18-12-84 and completed more than 240 days in 1984 is justified? If not, to what relief the workman concerned is entitled?”

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim at Page 2/1 to 2/3. Case of 1st party workman is that he was employed by management of DRM, office at office of PWI Goteagon as Parcel porter and till 9-2-79. His services were

terminated on 18-12-84. He worked more than 240 days in a year. That he attained status of employee defined under Section 25 B of ID Act. Service Card No. 33346 as casual labour. The entries about his working are recorded in it. He was removed arbitrarily. Even after he attained status of permanent employee, his services were terminated in violation of Section 25-F of ID Act. Workman had raised dispute before ALC. The dispute has been referred by Central Government. Workman reiterates that he was not considered for regular appointment as per seniority. His services are terminated illegally from 18-12-84. Workman prays for his reinstatement with backwages.

3. 2nd party management filed Written Statement at Page 8/1 to 8/3 opposing claim of workman. Case of 2nd party is employment of workman was purely of contract employment restricted to the tenure of the work. That soon after completion of the work, the term of employment of workman seized. Thereafter workman was not in employment of 2nd party. It is reiterated that employment of workman was restricted till completion of the work. Work was of casual nature. Claim of workman deserves to be dismissed. The tenure of employment had seized. workman is not entitled to any relief. Claim of workman for regularization as per seniority is false and without any basis. That applicant's claim is barred by time is liable to be dismissed.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Central Railway, Jabalpur (MP) in terminating the service of Shri Rubbilal S/o Shri Sumera, Ex. Parcel Porter MRCL w.e.f. 18-12-84 and worked for more than 240 days in 1984 is justified?	In Negative
(ii) If so, to what relief the workman is entitled to?"	As per final order

REASONS

5. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Workman filed affidavit of his evidence. Workman has stated that he was working as parcel porter from 9-2-79. He completed 120 days service. He was taken on regular strength initially for a period of 4 months. He was paid wages Rs. 210/- per month. After completion of 120 days service, he was paid salary Rs.700 per month. He was posted under PWI Gotegaon. He was continuously working till 18-12-84. His services are terminated without notice. He worked more than 240 days. Service Card No. 33346 was issued to him. Management not followed mandatory provisions of ID Act while terminating his service. In his cross-examination,

workman says after completing 120 days working on daily wages, he was working on monthly basis. The regular work was provided to him. he was working with Lohar Mistry. Break was given to him. He did not work after 1984. He was not aware about the case therefore case was filed after 6-7 years when he got information that case could be filed. That before his engagement, he submitted application. He did not recollect his date. Any document is not produced in that regard. He denies that he not completed more than 240 days continuous service. He did not receive order on monthly rated basis. Workman produced service Card Exhibit W-1. In his cross-examination, workman says he was paid for the working days shown in Exhibit W-1. He was working as parcel porter. He was unable to tell that he had not worked from 1979 to 1983. The service card produced by workman shows he was continuously working from 3-8-83 to 18-12-84. Workman had completed 240 days service during above said period. His services were terminated without notice. No retrenchment compensation was paid to him.

6. Management's witness Shri R.K.Shrivastva filed affidavit of his evidence denying that workman worked more than 240 days and his services were illegally terminated. Management's witness in his affidavit says that the dispute was raised after 16 years. The Railway Administration has recruitment policy. No authority can bypass said procedure for appointment against existing vacancies. In his cross-examination, management's witness says since 2012, he is working at Sridham Railway Station. His affidavit is filed as per documents. He admits that from 3-8-83 to 18-12-84, workman was continuously working. He admits that services of workman were terminated without notice. Workman was working as MR Khalasi. Management's witness was unable to tell when work of M.R.Khalasi was stopped in 2nd party. He denies that other khalasis were regularised. The evidence is clear that workman completed more than 240 days continuous service. Workman was terminated from 18-12-84. Learned counsel for 2nd party Shri A.K.Shashi submits that dispute is raised after lapse of 16 years is not tenable. In support of his argument, learned counsel relies on ratio held in case between

Indian Iron and Steel co.Ltd versus Prahad Singh reported in 2001(1) SCC-424. In above cited case, their Lordship dealing with latches, the dispute was raised after 13 long years of termination of service, no reasonable explanation is given for such delay. Their Lordship held Industrial Tribunal rightly refused to grant any relief.

In Para-10 of the judgment, their Lordship discussed in our view on the facts of the case in hand the aforementioned two decisions were of no avail to support the case of the respondent. The learned Single Judge also found fault with the Tribunal as to

the finding that the claim of the respondent was too stale to grant any relief when parties had not raised such a plea. When the Tribunal on proper and objective appreciation of the material on record found that the claim was made by the respondent after 13 years, it was open to it to refuse relief to the respondent. Moreover the Tribunal did not refuse relief merely on the ground of delay and latches as is evident from para 25 of the order extracted above. Tribunal has recorded that even without considering the question of delay the respondent had lost his lien on his appointment.

It is clear that claim of workman was not rejected only on the ground of delay.

7. Shri A.K.Shashi further relies on ratio held in

Case of Assistant Executive Engineer, Karnataka and Shivalinga reported in 2002-I-LLJ-457. Their Lordship in cases of serious dispute as to relationship of employer and employee, records of employer being relevant, would come in way of maintenance of same. Situation of such nature renders claim stale.

Shri P.C.Chandak counsel for workman pointed out my attention to para-6 of the judgment,. Their Lordship observed that there is no period of limitation prescribed under ID Act to raise dispute and it is open to party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part payment of back wages. It is no doubt true that in appropriate cases as held by this court in aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal as the case may be where there is no such dispute as to relationship between the parties as employer and employee.

In present case, from Document Exhibit W-1, relationship of employer employee is established. Workman worked more than 240 days in 1983 is also established. Therefore claim of workman cannot be rejected only on the ground of delay and latches.

8. Shri A.K.Shashi further relies on ratio held in

Case of Chief Engineer Construction versus Keshava Rao(Dead) by LRs reported in 2005-II-SCC-229. Their Lordship held unless initial burden of establishing factum of continuous work for 240 days in a year is discharged by workman and the employer fails to produce evidence in rebuttal, finding of non-compliance cannot be recorded.

In present case from Exhibit W-1, it is established that workman worked more than 240 days in 1983-84. The burden is discharged by workman by documentary evidence. Therefore ratio held in above cited case cannot

be applied to case at hand. In above case, delay was of a year and 5 months in issuing notice. The ratio held in the case does not pertain to the rejection of claim on the ground of delay and latches. As workman completed more than 240 days continuous service, his services were terminated without notice in violation of Section 25-F of ID Act, I therefore record my finding in Point No.1 in Negative.

9. **Point No.2-** In view of my finding in Point No.1 the services of workman are terminated in violation of section 25-F of ID Act long back in 1984, reinstatement of workman with backwages is not justified. considering period of working, compensation Rs.20,000/- would be adequate. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of Central Railway, Jabalpur (MP) in terminating the service of Shri Rubbilal S/o Shri Sumera, Ex.Parcel Porter MRCL w.e.f. 18-12-84 and worked for more than 240 days in 1984 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. 20,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2264.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडैंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 80/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/35/2007-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2264.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/35/2007-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/80/07

Shri Rajesh Beri,
New Hanuman Nagar,
Lakhe Nagar Ward,
Behind Durga Mandir,
Raipur (CG) ...Workman

Versus

Asstt. General Manager,
State Bank of Indore,
Zonal Office, National Highway,
Telibandha,
Raipur CG ...Management

AWARD

Passed on this 26th day of October, 2015

1. As per letter dated 17-8-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/35/2007-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of Indore, Raipur in terminating the services of Shri Rajesh Kumar Beri w.e.f. 25-5-06 is justified? If not, what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that he was engaged on daily wages by Branch Manager MG Road, Raipur of State Bank of Indore. Said Bank is merged in State Bank in 2010. Workman further submits that he was paid wages Rs.80 per day from 1-4-01. The wages were increased to Rs.90. He was paid wages for working days Monday to Saturday deducting the wages for holidays. That he completed more than 240 days working during each of the year is covered as employee under Section 25 B of ID Act. His services are terminated in violation of Section 25-F,G,H of ID Act. Principles of last come first go was not followed. After his termination from 25-5-06, 2nd party had engaged other persons on daily wages in violation of Section 25-H. Workman was not awarded employment. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 8/1 to 8/10 opposing claim of workman. 2nd party submits that State Bank of Indore was registered under State Bank of India Act, 1959 bearing Banking business. The employees in the Bank are appointed as per regulations by RBI in SBI. The sub staff are also appointed as per the rules and regulations. The candidates are called from Employment

Exchange. The post was advertised. Branch Manager has no authority to make appointments of sub staff. The principles of sub staff are transferred to the branches. Workman is claiming back door entry in service of the Bank. He is not entitled for service in the Bank. Ist party workman was never working in MG Road branch, Raipur. The work of cleaning sweeping is not carried by regular peons. For such work, labours are engaged on daily wages. Daily wage labours works one or two hours in the Bank. One hour before the Bank is opened and one hour after the Bank is closed. The daily wage labours have no right for regularization. Workman had not worked more than 240 days during any of the year. As Ist party workman was not appointed by the Bank, the provisions of ID Act are not applicable to him. 2nd party referred to ratio in various cases and submits that workman is not entitled to any relief as he was engaged on daily wages for casual work.

4. Ist party workman submitted rejoinder at Page 9/1 to 9/3 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of Indore, Raipur in terminating the services of Shri Rajesh Kumar Beri w.e.f. 25-5-06 is justified? In Negative

(ii) If not, what relief the workman is entitled to? As per final order.

REASONS

6. Ist party workman is challenging termination of his service for violation of Section 25-F,G,H,N of ID Act. Workman filed affidavit of his evidence. Ist party workman in his affidavit of evidence says that he was engaged on post of permanent peon on 1-4-01. He worked more than 240 days during each of the year till termination of his service from 25-5-06. Notice of termination was not issued to him. Retrenchment compensation was not paid before termination of his service. Workman had submitted complaint to ALC, Raipur in the matter of payment of bonus. 2nd party paid bonus of Rs. 10,277/- That during pendency of conciliation proceeding, his services were terminated in violation of Section 33 of ID Act. In his cross-examination, workman says he worked in State Bank of Indore, MG Road branch from 1-4-01 to 25-5-06. He was working under the Branch Manager Shri H.N.Khare, Patel, G.P.Mourya and Pathak. Appointment letter was not received by him. He had not appeared for any examination. He was paid weekly wages. He was doing work in treasury collecting bills, cheques. The evidence of workman that he worked more than 240 days during each of the year is not challenged in cross-examination.

7. Workman produced documents Exhibit W-1 is letter issued by Asstt. General Manager assuring payment of bonus to the persons engaged in different branches. Name of workman is appearing at Sl.No.6. document Exhibit W-2 shows workman was paid Rs. 10,277/- by cheque dated 30-4-02. Exhibit W-3 is letter dated 23-1-07 to ALC informing that the matter has been taken up with higher authorities for examining issue of payment of bonus to daily wagers. Exhibit W-4,5 is letter dated 11-12-06 & 5-2-07 by ALC, Raipur in the matter of complaint of non payment of bonus. Exhibit W-6 is letter issued by Asstt. General manager that daily wagers were engaged. Wages were paid at Collector rate. Exhibit W-2 corroborates evidence of workman that he was paid bonus of Rs.10,277/-. 2nd party has not produced documents regarding the working days for which bonus was paid to workman. Management's witness Shri Nikhil Chandra Shukla in his affidavit of evidence says that Bank of Indore was merged in State Bank of India on 20-7-2010. Workman had not completed 240 days during any of the year during 2001 to 2006. Workman was engaged as per exigency for cleaning, sweeping work one hour morning, one hour evening. The wages were paid to him. Workman is not entitled for regularization as he was engaged for casual work. Workman was not sponsored through Employment Exchange. He was not interviewed. Workman is not entitled for any relief. Management's witness in his cross-examination says he was not posted in MG Road branch during 2001 to 2006. He received information about the matter from Branch Manager Anthony who was working in said branch during 2011 to 2013. Management's witness claimed ignorance whether workman had filed conciliation proceeding before ALC, Raipur for regularization of service. He also claims ignorance whether before termination of workman, permission was taken. The documents regarding payment of retrenchment compensation are not available. Management's witness claims ignorance whether permission of Competent Authority was taken before engaging workman. The documents in that regard are not available. The documents regarding appointment of workman are not available. Attendance Register of workman was not maintained. Documents in that regard are not available. On information received from other employees, he has stated in his affidavit that workman was working for two hours. He claims ignorance about the documents received by workman under RTI Act. Presently cleaning work is carried by regular staff.

8. The documents produced by workman under RTI Act can be considered as evidence. The documents produced pertains to the payment of bonus to Shankarlal Dhewar, Rajkumar, (workman). The evidence of workman regarding payment of bonus is corroborated by documents supplied to workman under RTI Act.

9. 2nd party has not produced any record regarding working of Ist party workman, the wages paid to him. On

the other hand, workman had produced documents Exhibit W-2 bonus of Rs. 10,277/- was paid. The evidence of workman is corroborated by documents whereas evidence of management is heresay therefore I do not find reason to discard the evidence of workman that he completed more than 240 days continuous service.

10. Learned counsel for 2nd party Shri Vijay Tripathi relies on ratio held in

Case of Range Forest Officer versus S.T.Hadimani reported in 2002(3) SCC 25. Their lordship held where the workman's claim that he had worked for more than 240 days in the year preceding his termination was denied by the employer, held it was for the claimant to lead evidence to that effect. Workman's affidavit was not sufficient evidence for that purpose.

The ratio held in the case cannot be applied to present case at hand as evidence of workman is corroborated by document Exhibit W-2 bonus of Rs. 10,277/- was paid to him.

Reliance is also placed by counsel for 2nd party in case of

Krishna Bhagya Jala Nigam Limited versus Mohammed Rafi reported in 2009(11) SCC-522. Their Lordship held burden of proof as to completion of 240 days of continuous work in a year, reiterated lies on the aggrieved workman.

Ratio held in the case cannot be applied to present case as workman has proved for evidence that he completed 240 days continuous service as discussed above.

Reliance is also placed in case of Rajasthan State Ganganagar S.Mills Ltd. versus State of Rajasthan and another reported in 2004(8)SCC-161. Their Lordship held mere non production of muster roll for a particular part of the period concerned is not sufficient to hold that workman worked for 240 days as claimed.

The ratio held in above case cannot be beneficially applied to case at hand as evidence of workman is corroborated by Exhibit W-2 and documents supplied to him under RTI Act. As from the documents and evidence of workman, it is established that workman completed 240 days continuous service, his service were terminated without notice, no retrenchment compensation was paid to him. The termination of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

11. **Point No.2-** In view of my finding in Point No.1, termination of services of workman is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. Workman in his cross-examination says he was not issued letter of appointment,

he had not appeared for any test, he was paid weekly wages. Workman was not appointed following selection process. He was engaged on daily wages. The reinstatement with backwages would not be justified. Workman was working with 2nd party from April 2001 to 25th May 2006 for about 5 years. Considering above aspects, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2nd party is directed to pay compensation amount Rs. One Lakh to the workman.

The amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2265.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडैर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम व्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 181/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/262/2001-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2265.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 181/01) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/262/2001-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/181/01

General Secretary,
Dainik Wetan Bhoti Bank Karmchari
Sangathan, Indore

...Workman/Union

Versus

General Manager (Operations),
State Bank of Indore,
Head Office, Indore

...Management

AWARD

Passed on this 19th day of October, 2015

1. As per letter dated 27-11-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/262/2001-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of Indore in not giving permanent appointment to Shri Krishan Rao Gaur in the Bank service is justified? If not, what relief he is entitled?”

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim at Page 3/1 to 3/4. Case of workman is that he was engaged as peon by Branch Manager Shri S.P.Padlikar on 1-1-1991. He was paid wages Rs.15/- per day. Workman was honestly working. His wages were increased to Rs.20/-, 30/-, 35/-, 40/-. He worked with 2nd party till November 1994. He was paid wages for six days in a week. As per requirement, in December 1994, workman was sent to Dhamtari branch. His wages were increased to Rs. 40/-, 45/-, 50/-, 60/- per day. Workman was discontinued without notice from 8-4-99. Workman raised dispute. Workman further submits that he worked more than 240 days continuous service. He is covered as employee under section 25 B of ID Act. His services are terminated in violation of Section 25-F of ID Act. He was not served notice, retrenchment compensation was not paid to him. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 9/1 to 9/9 opposing claim of the workman. 2nd party raised preliminary objection that workman was not employed by the Bank. Workman has not allotted permanent status. Workman was engaged as daily wage sweeper as casual worker. It does not give right to workman for regularization. Employer employee relationship does not exists between parties therefore reference is not tenable. Shri Ram Nagwanshi is dismissed employee of the Bank, he is not competent to raise the dispute. 2nd party Bank has its own service regulations for recruitment. Workman was not appointed as per rules and regulations. His name was not sponsored through Employment Exchange. Workman was engaged for 2 hours before opening of the Bank and one hour after closing of the Bank. Workman was engaged for sweeping work, in supplying drinking water to the employees. He not completed 240 days continuous service as part time employee. Claim of workman is not tenable. 2nd party submits that there is no substantiate claim of workman and reference be answered in its favour.

4. Workman filed rejoinder at Page 10/1 to 10/3 reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

<p>(i) Whether the action of the management of State Bank of Indore in not giving permanent appointment to Shri Krishan Rao Gaur in the Bank service is justified?</p> <p>(ii) If not, what relief the workman is entitled to?"</p>	<p>In Affirmative</p> <p>Workman is not entitled to any relief.</p>
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REASONS

6. The dispute under terms of reference pertains to denial of regularization of the workman. Workman filed affidavit of his evidence. Workman in his affidavit says that he was engaged on daily wages as peon from 1-1-91. He worked more than 240 days during each of the year till December 1994. His wages were increased from time to time. From December 1994, he was sent for work to Dhantari branch. He continuously worked in said branch from 19-12-94 to 8-4-99. His services were terminated without notice. Retrenchment compensation was not paid to him. Workman could not be cross-examined as he died during pendency. The LRs of deceased workman are brought on record. Widow of workman Parvati filed affidavit of her evidence covering above facts. In her cross-examination, widow of workman denied that workman was working for 1-2 hours in a day. She was unable to tell whether appointment letter was issued to deceased workman. She denies that her husband was engaged in leave period. She was unable to tell of the working days of deceased workman during any of the year.

7. Ist party has produced certified copy of admitted documents in R/165/02. The working period of deceased workman is shown from 19-12-94 till certificate was issued on 4-10-97 and wages paid to workman has increased to Rs.40/-, 45/-, 50/-, 60/- per day.

8. Management's witness Anjan Kumar filed affidavit of his evidence supporting contentions of 2nd party in Written Statement. That Bank never appointed workman in its service. The workman was engaged as casual labour for few hours in a week for several work. That permanent vacancies in the branch are filled on 21-3-98. No permanent staff is required. Bipartite Settlement dated 19-10-66 applies only to the employees of the Bank. In his cross-examination, management's witness says workman was working in the branch from 1994 to 1999. The dispute was raised before ALC Indore for regularization. Workman was engaged as

per exigencies. He was working 2 hour in morning, one hour in afternoon. Workman was served with termination notice.

9. Management's witness Mahadeo Barapatre filed affidavit of his evidence stating that workman was not given appointment letter, he not completed 240 days continuous service during any of the year. The services of deceased workman were only s daily rated casual workman. The workman is dead therefore the claim of Ist party workman for permanent appointment has frustrated. Besides it, any rule has not been brought to my notice that workman is entitled for regularization. Merely working as part time sweeper, cleaner as proved from admitted documents in another reference cannot establish the claim of Ist party workman for permanent appointment.

10. Learned counsel for 2nd party Shri Praveen Chaturvedi relies on ratio held in

Case of Bharat Sanchar Nigam Ltd. versus Man Singh reported in 2012(132)FLR 500. The ratio relates to daily wager does not hold post and not a permanent employee. Instead of reinstatement, compensation was allowed.

In case of Mahboob Deepak versus Nagar Panchayat Gajraula and another reported in 2008(1) SCC 575, the ratio held in the case pertains to claim for regularization of daily wager/ adhoc employees.

Ratio held in both cases cannot be applied to present case as workman had died and any rule is not brought to notice for giving permanent appointment to daily wager. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of State Bank of Indore in not giving permanent appointment to Shri Krishan Rao Gaur in Bank is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2266.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैनई के पंचाट (संदर्भ संख्या 95/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/96/2013-आईआर (बी-I)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2266.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/96/2013-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 18th November, 2015

Present :

K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 95/2013

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and Another and their workman].

BETWEEN:

Sri S. Savarinathan : 1st Party/Petitioner

AND

1. The Regional Manager, : 2nd Party/1st
(Disciplinary Authority) ...Respondent
State Bank of India, Region-IV
Regional Business Centre
Puducherry-605001

2. The Deputy General : 2nd Party/2nd
Manager, (B&O) ...Respondent
State Bank of India,
Chennai Zone-II, Z.O.
Chennai-600001

Appearance:

For the 1st Party/ : M/s Balan Haridas, Advocates
Petitioner

For the 2nd Party/ : M/s T.S. Gopalan & Co.,
Respondents Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/96/2013-IR (B-I) dated 28.11.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Management of State Bank of India in dismissing Sri A. Savarinathan, Ex-Clerk of Panrutt Branch is legal and justified? To what relief the concerned workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 95/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. The petitioner has filed a rejoinder in reply to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner are as below:

The petitioner was appointed as clerk-cum-Cashier in Kallakurichi Branch of SBI on 11.09.1997. He was transferred to Panrutt Branch in the year 2003. He continued in the said branch till he was dismissed from service by order dated 27.09.2012. The entire service of the petitioner is without any blemish except the allegation for which his service was terminated. The petitioner was placed under suspension from 15.02.2010. After 16 months the Second Respondent issued a Charge Sheet containing 13 charges to the petitioner. The charges leveled against the petitioner were that he misused the capability level given to him by the Bank and altered the limit of his overdraft facility, unauthorisedly withdrew amount over and above sanctioned limit of overdraft facility, opened demand loan account in the name of one Gopal and obtained loan by himself, opened loan account in the name of one Vanathu Chinnappan and obtained loan through that account also, debited amount from the account of one Jayarani using his ID for deriving pecuniary benefits, debited the account of one Christuraj and credited the amount to his own account through his ID for his pecuniary benefits, debited the account of one Rajarajendran and credited the same to his account for his pecuniary benefits, retained the amount received from a women's forum to be credited to its account and failed to credit the amount for four months, debited the account of one Rajendran Cashews and credited the amount to his wife's account, debited the gold loan account of one Abel and credited it to another account and withdrew it himself through his ID for his pecuniary benefits, transferred amount from the account of Rajendra Cashews and from the account of Arul Doss through his ID and credited these amounts to his account, sanctioned education loan to one Britto and transferred portion of the amount to his own account, foreclosed the Fixed Deposit in the name of Gopal without the knowledge of the customer, credited the proceeds to the SB Account of Gopal, unauthorisedly withdrew amounts from the account of Gopal, opened TDR account in the name of Gopal and remitted Rs. 6.00 lakhs for funding the account. The petitioner is alleged to have committed misconducts in terms of Rule-5(j) of Memorandum of

Settlement dated 10.04.2002. An enquiry was conducted on the charges leveled against the petitioner. The Enquiry Officer submitted report finding that Charges 1, 2 and 3 and 5 to 13 are proved and Charge No. 4 is proved partially. The findings of the Enquiry Officer are perverse. The enquiry was conducted in accordance with the principles of natural justice. There is no legal or factual basis for the findings of the Enquiry Officer. The petitioner was dismissed from service based on the report of the Enquiry Officer. The dismissal of the petitioner is illegal and arbitrary. An award may be passed holding that the punishment imposed on the petitioner is illegal and also directing the Respondents to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

4. The Respondents have filed Counter Statement contending as below :

Since October 2003 the petitioner was working as an Assistant in Panruttin branch of SBI. He was sanctioned a personal loan of Rs. 2,00,000/- in September 2005. When the Regional Office at Tiruchy was monitoring the overdraft of various loan accounts in September 2005 it came to light that the petitioner was overdrawing personal loan. On investigation it was found that the petitioner had by himself increased the limit of his personal loan to Rs. 3.00 lakhs on 29.08.2007, then reduced it Rs. 2.00 lakhs on 14.11.2007 and again increased it to Rs. 3.00 lakhs on 03.04.2009 and had unauthorisedly overdrawn his personal overdraft account. He had debited the cash credit limit account of Rajendra Cashew, a customer of the Branch with a sum of Rs. 48,000/- and transferred it to his SB Account. He had made a debit of Rs. 50,000/- in the SB account of Arul Doss and transferred this also to his SB Account. These transfers were not authorized by the customers. On investigation it came out that on 13.11.2009 the petitioner closed his overdraft account by cash payment of Rs. 2,99,994/. On verification it was found that one R. Gopal had FD Account to the tune of Rs. 6,06212/- and the petitioner had foreclosed that account crediting the proceeds to the SB Account of Gopal. By forging the signature of Gopal the petitioner had withdrawn Rs. 4,50,000/. Out of this amount he had credited Rs. 2,99,994/- to his personal loan account on 13.11.2009. The petitioner opened a Demand Loan Account for Rs. 2.00 lakhs in the name of Vanathu Chinnappan without his knowledge and had taken the loan amount for himself. The petitioner used his ID number for debiting the SB Account of Jayarani with Rs. 14,000/- on 11.01.2010 using Plain Debit Voucher and credited the same to his SB Account. The amount was misappropriated by the petitioner. The petitioner also debited the account of one Christuraj for Rs. 2,000/- and credited the same to his SB Account. On 12.01.2010 the petitioner debited the SB Account of Rajarajendran for Rs. 16,000/- and credited the same to his SB Account without preparing voucher. On

31.08.2009 the petitioner received Rs. 2,000/- from Magalir Mempadu Mandram, Nadumettukuppam but did not account for it and credited to the customer's account only on 30.12.2009. On 21.10.2009 the petitioner debited the account of Rajendra Cashew with an amount of Rs. 12,000/- and credited the same to his wife's SB Account without preparing any voucher. On 21.01.2010 he unauthorisedly debited the Gold Loan Account of Shri Abel with Rs. 10,000/- under his ID number and credited the same to another SB Account. On recommendation of the petitioner Educational Loan of Rs. 60,000/- was disbursed to one Britto on 01.10.2009 and credited to his SB Account. The petitioner transferred Rs 50,000/- to his OD Account without preparation of any voucher. On 26.09.2009 the petitioner debited his account with Rs. 1.00 lakh without preparing any voucher and credited it to his wife's SB Account. On the basis of the investigation report against the petitioner 13 charges were framed against the petitioner. A charge memo was issued to him and he was asked to submit his explanation. The petitioner gave a reply simply denying the charges. In view of the denial of the charges an enquiry was conducted. The Enquiry Officer gave report holding that Charge No. 4 is partly proved and all other charges are fully proved. The petitioner had given a representation regarding the report. After considering the representation the punishment of dismissal from service was imposed on the petitioner. The domestic enquiry held on the charges against the petitioner was fair and proper and does not call for any interference. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder denying the allegations in the Counter Statement and reiterating his case in the Claim Statement.

6. The evidence in the case consists of the documents marked as Ext.W1 to Ext.W20 and Ext.M1 to Ext.M205. Oral evidence was not adduced by either side.

7. The points for consideration are:

- (i) Whether the action of the Respondents in dismissing the petitioner from service is legal and justified?
- (ii) To what relief, if any to which the petitioner is entitled?

The Points

8. The petitioner who was working as Clerk-cum-Cashier at Panruttin Branch of the Respondent Bank was dismissed from service on 27.09.2012 on the basis of the report of the Enquiry Officer on the charges of misconduct alleged against him. The Enquiry Officer has found that out of the 13 charges the 4th charge is proved partially and all the other charges are fully proved. The Disciplinary Authority acted upon this report and dismissed the petitioner from service. The contention of the petitioner is that he has not committed any misconduct, the management has not established the charges against him and the Enquiry

Officer has entered a finding against him without any legal or factual basis. The petitioner has raised the dispute against the order of dismissal by the Disciplinary Authority, the First Respondent and Appellate Authority, the Second Respondent.

9. The petitioner was suspended from service on detecting certain acts of gross-misconduct allegedly committed by him as per Ext.W1, the order dated 15.02.2010. The charge memo containing 13 charges, the copy of which is marked as Ext.W2 was issued to him on 24.06.2011. The different charges leveled against the petitioner can be examined separately to find out if there is any justification for the report of the Enquiry Officer or the punishment imposed on the petitioner.

10. Charges 1 and 2 go together and can be discussed together. The first charge runs as below:

Charge No. 1

You were sanctioned a personal loan (Overdraft) limit of Rs. 2.00 lakhs on 20.09.2005. While you were officiating as Assistant Manager (Cash) you were given Capability Level-7 by the Branch Manager to enable you to discharge your duties as Assistant Manager (Cash). It is alleged that you have misused the capability level -7 given to you by the Bank for your personal benefits by altering your limits in your personal loan (overdraft) Account, as mentioned below:

29.08.2007 – altered the limit to Rs. 3.00 lakhs from Rs. 2.00 lakhs

14.11.2007 – altered the limit to Rs. 2.00 lakhs from Rs. 3.00 lakhs

03.04.2009 – altered the limit to Rs. 3.00 lakhs from Rs. 2.00 lakhs.

Thus you have betrayed the trust and confidence reposed by the bank on you and misutilized the power for your personal benefit.

Charge No. 2

You had unauthorizedly withdrew from your Personal Loan (Overdraft) Account over and above the sanctioned limit of Rs. 2.00 lakhs as mentioned in Annexure-I and thereby resorted to unauthorized excess drawings in your personal loans (overdraft) Account.

11. As could be seen, the gist of Charges 1 and 2 put together is that the petitioner altered his personal loan (overdraft) limit thrice misusing the Capability Level-7 given to him in his capacity as officiating Assistant Manager (Cash) and withdrew amount over and above the sanctioned overdraft limit of Rs. 2.00 lakhs. It is pointed out on behalf of the Respondents that the factum of alterations in the overdraft limit is not disputed by the

petitioner. The counsel for the Respondent has referred to the defense brief submitted on behalf of the petitioner before the Enquiry Officer and marked as Ext.W20. What is stated in the defence brief is that on 29.08.2007 the petitioner has erroneously altered the overdraft limit from Rs. 2.00 lakhs to Rs. 3.00 lakhs and the same was approved by some other official. It is also stated in the defence brief that as the petitioner has not withdrawn any amount over and above the limit of Rs. 2.00 lakhs it could be seen there was no malafides on his part. It is further stated in the defence brief that on 14.11.2007, on coming to know of the erroneous alteration, he has corrected the limit from Rs. 3.00 lakhs to Rs. 2.00 lakhs. This was also approved by one of the officials of the Branch. Regarding the third alteration on 03.04.2009 to the limit of Rs. 3.00 lakhs from Rs. 2.00 lakhs it is stated in the defence brief that the petitioner has applied for enhancement of limit of his personal loan to Rs. 4.00 lakhs on 08.07.2008 and the same was sanctioned, but the petitioner has erroneously changed the limit from Rs. 2.00 lakhs to Rs. 3.00 lakhs instead of Rs. 4.00 lakhs and this was also approved by one of the officials of the branch. As per the defence brief the petitioner has requested the Enquiry Officer to provide the copy of the letter seeking enhancement in the overdraft limit and also the sanction letter from the Zonal Office but these were not made available till the end of the proceedings. Thus it could be seen from the defence brief that the case regarding Charge No. 1 is that the petitioner has initially altered the limit erroneously from Rs. 2.00 lakhs to Rs. 3.00 lakhs and then brought it down to Rs. 2.00 lakhs when he realized his error but subsequently again he altered the limit from Rs. 2.00 lakhs to Rs. 3.00 lakhs which was also an error since he had already obtained sanction for increasing the limit to Rs. 4.00 lakhs.

12. The Respondents have produced Ext.M88 the personal loan sanctioned letter dated 20.09.2005 for an amount of Rs. 2.00 lakhs which according to the Respondents is the overdraft limit sanctioned to the petitioner. According to the Respondents there was no enhancement of limit subsequently. So the petitioner had no power to withdraw amount above the overdraft limit of Rs. 2.00 lakhs which is permitted as per Ext.M88. There is no case for the petitioner that on 29.08.2007 when he altered the limit to Rs. 3.00 lakhs from Rs. 2.00 lakhs he had submitted any application for enhancing the limit of overdraft. His case is that it was only an error and he had corrected it by showing the limit as Rs. 2.00 lakhs on 14.11.2007. It is his further case that he did not withdraw any amount above the limit of Rs. 2.00 lakhs within the period from 29.08.2007 to 14.11.2007 and this shows his bona fides. Apparently, the petitioner has not even requested for enhancing the limit. It is not known how the petitioner could have enhanced the limit from Rs. 2.00 lakhs to Rs. 3.00 lakhs. This certainly could not have been an unintentional error as the petitioner could not have been

under the supposition that he could enhance it himself without any sanction. On the other hand it is apparent from the admission made by the petitioner regarding the “error” that he knew very well that he could not have enhanced the limit on his own without any sanction for enhancement of the limit. He had brought down the limit to Rs. 3.00 lakhs on 14.11.2007.

13. The case of the petitioner regarding alteration of the limit from Rs. 3.00 lakhs on 03.04.2009 is that his request for enhancement of the limit was sanctioned. The counsel for the petitioner has stated in his notes of argument that the Branch Manager has admitted that the proposal dated 08.07.2008 for enhancement of the loan limit has been dispatched from the branch. According to him, if the same was produced it would have come to light that the proposal was sanctioned by the Bank. However, this argument of the counsel could not be accepted. Perhaps Ext.M88 would not show that this is the last order sanctioning overdraft facility for the petitioner. However, it is clear from Ext.M88 that in the absence of any order of sanction enhancing the limit and without complying with the conditions for enhancement it would not have been possible for the petitioner to use the overdraft facility. As seen from Ext.M88 the overdraft limit of Rs. 2.00 lakhs is sanctioned to the petitioner. However, the sanction order specifies that the instructions contained in the annexure to the circular regarding overdraft facility, regarding security and documentation (including obtaining arrangement letter) duly acknowledged by the employee) etc. are to be complied with. Apart from other conditions it further states that documents are to be signed wherever required. At Page-96 of the document there is a letter by the petitioner to the Trustee of State Bank of India Provident Fund / Gratuity Fund authorizing them to hand over to SBI the cheque for entire amount payable to him under the Employee’s Provident Fund and Gratuity. It could be seen that this was given as security for the overdraft facility. Thus, it could be seen that it is not enough that an order sanctioning enhancement in the overdraft limit is obtained but consequent to the order the petitioner is bound to execute documents for giving such overdraft facility. It is pointed out by the counsel for the Respondents that every loan account should be supported by an application for loan, order of sanction and a demand promissory note. Merely because the petitioner has made a request for enhancing the limit he could not have altered the limit of his overdraft loan account to his benefit without complying with the terms and conditions of order of sanction. He must have been well aware of this for the very fact that he has executed such documents consequent to Ext.M88 sanction order which allowed overdraft facility of Rs. 2.00 lakhs. Ext.M90 is the letter addressed to the petitioner asking him to submit explanation for drawing amount in excess of the limit. In Ext.M91, the explanation given by him, the petitioner has stated that the transactions

have been carried out by him under the impression that the limit applied for had been sanctioned until it was brought to his notice as excess drawn. So the case of the petitioner that his request for enhancement of limit in overdraft facility was allowed and that is why he has altered the limit in the system could not be accepted. He had also admitted that he had utilized the fund upto the limit applied for as and when required. The petitioner could not have unilaterally altered the limit without a sanction order or without complying with the directions in the sanction order. The petitioner has apparently altered the limit of the overdraft facility for his advantage. It is neither an error nor an innocent act on his part.

14. The annexure to the charge sheet refers to the excess withdrawal made by the petitioner on the basis of the altered limit of the overdraft facility. As seen from the annexure he had exceeded the limit of Rs. 2.00 lakhs in withdrawing the amount on 73 occasions. The fact that he has not withdrawn any amount exceeding the limit in the periods between 29.08.2007 and 14.11.2007 is not justification for his altering the limit. It is admitted by him that after he altered the limit on 03.04.2009 he was freely making withdrawals exceeding the limit. In Ext.M91 he has requested the Branch Manager to condone the lapse on his part. The argument of the counsel for the petitioner that the transactions have been approved by the checker is no justification for withdrawal of the amount in excess. The misconduct on the part of the petitioner cannot be justified on the basis that it was approved by someone else. The petitioner was very well aware that he could not alter the limit of overdraft policy without a sanction order and could have withdrawn amount only after compliance of the terms of the sanction order. The petitioner was using Capability Level-7 given to him in his capacity as officiating Manager (Cash) to his advantage. The capacity was given to him to transact his business with the customers. He was using this facility to his own advantage. The act of the petitioner certainly amounts to misconduct. The Enquiry Officer had every reason to enter a finding against the petitioner on these charges.

15. Charge No. 3 and 13 go together and are discussed together. These charges are as below:

Charge No. 3

You opened a Demand Loan Account in the name of Sri Gopal Account No. 30828940598 for Rs. 2.00 lakhs on 18.07.2009 without any supportive documents and without the knowledge of the customer. You have taken the loan amount of Rs. 2.00 lakhs yourself by means of cash without preparing voucher. The customer Sri Gopal has confirmed that he has not availed any loan for Rs. 2.00 lakhs on 18.07.2009 and the original receipt was available with him at that material time.

You have foreclosed FD standing in the name of Sri Gopal Account No. 30475328073 to the tune of Rs. 6,06,212/- on 13.11.2009 without the knowledge of the customer and credited the proceeds to the SB account of Sri Gopal's account number 10577761601. The original script was with the customer at the material time.

On 16.11.2009 you have debited SB Account No. 10577761601 standing in the name of Sri Gopal with Rs. 2.00 lakhs and credited it to unauthorized DL Account No. 30828940598 opened by you in the name of Sri Gopal.

The unauthorized transactions were put through by you under your ID for your pecuniary benefits.

All the above transactions were done by you without the knowledge of the customer. Your above acts tantamount to misappropriation of the customer's money and the trust reposed by the customers on the Bank.

Charge No. 13

You have foreclosed FD standing in the name of Sri R. Gopal Account No. 30475328073 to the tune of Rs. 6,06,212/- on 13.11.2009 without the knowledge of the customer and credited the proceeds to SB Account of Sri Gopal Account No. 10577761601. The original script was with the customer at the material time. You have unauthorisedly withdrawn an amount of Rs. 2.00 lakhs and Rs. 2.50 lakhs on 13.11.2009 from the customer Sri Gopal's SB Account without his knowledge and got payment from SWO counter of Smt. R.N. Kumari.

You have opened the TVR Account in the name of Sri Gopal on 17.11.2009 and remitted Rs. 6.00 lakhs for funding the account through SWO Smt. R.N. Kumari for which no credit voucher is available.

The unauthorized transaction of foreclosure was put through by you under your ID for deriving pecuniary benefits.

16. As could be seen, the gist of Charge No. 3 is that the petitioner opened a Demand Loan Account in the name of one Gopal, an account holder for Rs. 2.00 lakhs without his knowledge and took the loan amount by himself, he foreclosed the FD for Rs. 6,06,212/- standing in the name of Gopal without his knowledge and credited the proceeds to the SB Account of Gopal, then debited the SB Account of Gopal for Rs. 2.00 lakhs and credited this amount to the unauthorized DL Account opened by him in the name of Gopal and all these were done to misappropriate the customer's money. Charge No. 13 is to the effect that after foreclosing the FD Account and crediting the proceeds to the SB Account of Gopal the petitioner withdrew Rs. 2.00

lakhs and Rs. 2.540 lakhs on 13.11.2009 and opened TDR account in the name of Gopal on 17.11.2009 and remitted Rs. 6.00 lakhs for funding the account through the Single Window Operator, Smt. R.N. Kumari, without any credit voucher.

17. The Enquiry Officer who has separately discussed the two charges had entered a finding that these charges are proved. However, the Enquiry Officer did not discuss the material that were placed before him or give any reasons for arriving at such findings. He has merely reproduced the written arguments submitted on behalf of the Management and has stated that the Management has established through the documents and oral evidence that the charges are proved. Certainly, This should not have been the manner in which the finding was arrived at by the Enquiry officer. The Apex Court has held in the decision in ANIL KUMAR AND OTHERS VS. PRESIDING OFFICER AND ANOTHER reported in CDJ 1985 SC 290 that satisfactory decision of a disputed claim may be reached only if it is supported by the most cogent reasons that appealed to the Authority. The apex court has noticed in the above case that the enquiry report is an order sheet which merely produced the stage through which the enquiry passed. There could not have been a more gross case of non-application of mind, it has been observed. In the present case also so far as Charges 3 & 13 are concerned, the Enquiry Officer has not applied his mind to the facts of the case or tried to draw inference from the available material. A perusal of the report of the Enquiry Officer is not of any help in the matter. So a discussion of the entire case independent of the report of the Enquiry Officer is required.

18. It has been pointed out by the counsel for the petitioner that the Enquiry Officer was influenced by the statement of Gopal marked in the proceedings. As already stated there is no specific reference to the statement or any other documents on the side of the Respondents in arriving at the impugned conclusion by the Enquiry Officer. There is only a general reference to the evidence and documents. The counsel for the petitioner has pointed out that the statement said to have been given by Gopal and marked as Ext.M203 is to be discarded as it is not proved properly. Gopal who is said to have given the statement is not examined in the enquiry proceedings. Certainly, the statement could not be relied upon in the absence of examination of the author of the statement. This principle has been asserted by the High Court of Madras in the decision in CHAIRMAN, PANDYAN GRAMA BANK, VIRUDHUNAGAR Vs. PRESIDING OFFICER, CGIT-CUM-LABOUR COURT AND ANOTHER reported in 2010 4 LLN 824. It was held here that such statement proved through someone other than the author of the statement is not substantive to prove the contents of the statement. Reliance was also placed on the decision in B. PADMAIAH Vs. THE UNION OF INDIA AND

OTHERS represented by SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI reported in 2007 WRIT LR 7. It was held here that if the statement of the person is to be relied upon the author of the statement has to be examined and then only the delinquent would get an opportunity to cross-examine as to the veracity of the statement. Marking a statement not through the author of the statement violate the principles of natural justice as the delinquent loses the valuable opportunity to cross-examine the author, to test the veracity of the statement said to have been made by him, it was held. Relying upon a statement which is not proved through the proper procedure as a material is a negation of the principles of natural justice and is a violation of the person's right to defend himself, it was observed. Probably, it is only on account of this the counsel for the Respondents has not even referred to the statement of Gopal in the written submission given by him.

19. Bereft of Ext.203 what is the evidence available to justify Charges No. 4 and 13? It is alleged that the petitioner had opened a Demand Loan Account in the name of Gopal for an amount of Rs. 2.00 lakhs on 18.07.2009 without supportive documents and without the knowledge of the customer and he had taken the loan amount by means of cash without preparing voucher. It is not disputed that Demand Loan Account was opened in the name of Gopal under the ID of the petitioner. However, in the absence of assertion from Gopal there is nothing to show that it was done without the knowledge of the customer. The case of the Management is that this was done without any supportive documents. It is pointed out by the counsel for the petitioner that every loan document would be kept in the locker on the same day with joint custodian. It is pointed out by the counsel for the petitioner that it is impossible to open Demand Loan Account without the documents. The Branch Manager has admitted that without the knowledge of the Manager no account can be opened. The loan account was closed on 21.12.2009 by remittance of cash. This was not by the petitioner but in some other ID number. It is argued by the counsel for the petitioner that if loan was not taken by Gopal, there is no reason for him to close the account. In the VVR Checking Register there is no reference that the vouchers for the said period was missing. If there is no voucher for the transaction it would have been in the register. In the absence of any such entry the case that the transaction was carried out by the petitioner without any voucher could not be accepted.

20. The next limb of charge 3 is that the petitioner foreclosed FD standing in the name of Gopal to the tune of Rs. 6,06,212/- on 13.11.2009 without the knowledge of the customer and credited the proceeds to the SB account of Gopal. As already stated Gopal himself did not come forward to speak about this. Ext.M89 is the deposit receipt, the maturity date of which is 26.08.2011. The amount was

credited to the SB account of Gopal on 13.11.2009, as seen from Ext.M85. The transaction was carried out by the petitioner with checking by another official. The absence of any reference in the VVR Checking Register regarding the absence of voucher comes to the rescue of the petitioner in this case also. There is no evidence to show that the transaction was carried out by the petitioner without the knowledge of the customer.

21. The next part of the charge is that on 16.11.2009 the petitioner has debited the SB Account of Gopal with Rs. 2.00 lakhs and credited it to the unauthorized Demand Loan Account of Gopal. Though the transaction was carried out by the petitioner it is authorized by another official. The non-reference to the absence of voucher in the register is the case here also. So there is no way to know if this was done by the petitioner without the knowledge of the customer.

22. So far as Charge No. 13 is concerned the case is that after foreclosing the FD in the name of Gopal without his knowledge and crediting the proceeds to the SB Account of Gopal the petitioner unauthorizedly withdrew Rs. 2.00 lakhs on one occasion and Rs. 2.50 lakhs on another occasion, both on 13.11.2009 and obtained payment from the Single Window Operator counter of Smt. R.N. Kumari. According to the Management on 17.11.2009 the petitioner opened a FD in the name of Gopal for Rs. 6.00 lakhs. It is stated by the counsel for the petitioner that both transactions are not by the petitioner but under some other ID number. Ext.M94 is the withdrawal form in respect of Rs. 2.50 lakhs and Ext.M95 is the withdrawal slip in respect of Rs. 2.00 lakhs. The ID number of the person who made the transaction is not legible from Ext.M94. However, the ID number shown in Ext.M95 is ID Number 3582876. The ID number of the petitioner is 3587754. Payment of cash regarding these transactions also are done under ID 3582876.

23. The counsel for the Respondents have stated that the disputed documents were sent for opinion of the forensic expert and the expert has given opinion that the signature are not that of the account holders. It is seen from Ext.M93 the letter written by the Branch Manager of Panruti Branch to the Assistant Director, Forensic Sciences Department that withdrawal slips which are marked as Ext.M94 and Ext.M95 were sent for the opinion of the handwriting expert alongwith other disputed signatures. Ext.M186 is the report of the forensic expert in which it is stated that the disputed signatures are not that of the account holder. Alongwith the two withdrawal slips, the specimen signature in the account opening form of Gopal, a credit slip and a withdrawal slip containing signatures of Gopal also are seen sent to the Forensic Expert for comparison. The signatures in the two withdrawal slips dated 13.11.2009 are marked as Q9 and Q10 by the expert. The forensic expert has reported that the disputed signatures are not written by the person who wrote the

admitted signatures. This report might show that the signatures in the two withdrawals slips are not of Gopal. However, this report is not of any consequence so far as the petitioner is concerned for the reason that the maker of the two withdrawals slips is not the petitioner but some other official of the Bank. So there is no proof for the case of the Management that the petitioner had withdrawn the amounts by the withdrawal slips referred to earlier. Even the TDR account opened in the name of Gopal for Rs. 6.00 lakhs is through Kumari, another official of the Bank. According to the petitioner the voucher which is available was not deliberately produced by the Bank. In short the material furnished by the Management is not sufficient to pinpoint the petitioner with Charges 3 and 13.

24. Charge No. 4 against the petitioner runs as below:

Charge No. 4

You opened a Demand Loan Account of Rs. 2,00,000/- in the name of one Vanathu Chinnappan bearing Account No. 30907138743 on 29.09.2009 without the knowledge of the customer and took the loan amount of Rs. 2,00,000/- yourself. Sri Vanathu Chinnappan has confirmed that he has not availed the loan. Thus you have misappropriated the bank's money for your personal benefits.

25. Ext.M68 is the screen shot in respect of the account of Vanathu Chinnappan. On 29.09.2009 Rs. 2,00,000/- is seen withdrawn from the account through the ID of the petitioner. Ext.M134 is the VVR showing that cash advance of Rs. 2,00,000/- has been paid through the ID of the petitioner.

26. Vanathu Chinnappan has been examined as PW7 before the Enquiry Officer. Prior to that he has given two statements to the Branch Manager who made a preliminary enquiry and these were marked through him at the time of his examination. These statements are marked here as Ext.M101 and Ext.M102 respectively. Translation of the statements in Tamil has been furnished. So also translation of the evidence of Vanathu Chinnappan which is in Tamil also has been furnished. In Ext.M101 Vanathu Chinnappan has stated that in the year 2008 he has made a Fixed Deposit of Rs. 4,00,000/- with Panruti Branch of the Respondent and in December 2009 he had received the amount with interest of Rs. 50,000/-. He has further stated that he had not approached the Bank for a loan on the basis of his Fixed Deposit Receipt. However, he came to know that without his knowledge and consent someone had illegally taken loan in his name. In Ext.M102 also he has stated about his Fixed Deposit and withdrawal of the amount with interest, the date of which he has specified as 26.10.2009. He has further stated that in February 2010 the petitioner had informed that he had taken a loan of Rs. 2,00,000/- in his account. It is further revealed from the statement that the petitioner had forcibly paid Rs. 2,00,000/- to Vanathu Chinnappan. When he refused to accept it

there was pressure from the petitioner and he had accepted the money on the assurance that it will not affect his family. Later the Bank Officers met him and he came to know that the loan was wrongly taken in his name by the petitioner. On coming to know about this he had given back the amount that was paid to him by the petitioner, says the statement.

27. Vanathu Chinnappan has affirmed during his examination that Ext.M101 and Ext.M102 are the statements given by him to the Bank. He has revealed during his evidence that he never approached the Bank for loan based on his Fixed Deposit. The petitioner who is his relative and is working in the Respondent Bank had approached him with his family members and had informed him that he had taken a loan of Rs. 2,00,000/- in his name. He has further stated that the petitioner has told him not to reveal this to anyone as it will affect his job. It was thereafter the petitioner had asked him to keep Rs. 2,00,000/- with him. According to Vanathu Chinnappan the petitioner told him to save his family and begged him not to reveal anything about the loan. He received the amount on the assurance that he will not encounter any problem on account of this.

28. The witness Vanathu Chinnappan has been extensively cross-examined on behalf of the petitioner. He has asserted during his cross-examination that the two statements were given by him. He has stated that the petitioner and his family had approached him at his house with the amount. He has stated that it was only out of compulsion he received the amount from the petitioner. He even stated that he received the amount from the petitioner in four bundles of Rs. 500/- denomination. On coming to know of the misconduct committed by the petitioner from the Branch Manager, he had returned the amount, Rs. 1,00,000/- through the mother of the petitioner and Rs. 1,00,000/- through his father-in-law.

29. The counsel for the petitioner has referred to the evidence of Vanathu Chinnappan and has stated that the evidence of his witness could not be relied upon because of the contradictions in the evidence. He has pointed out that in Ext.M101 what is stated is that he came to know that someone had drawn Rs. 20,000/- and not Rs. 2,00,000/-. It is further pointed out by him that the document was shown to Vanathu Chinnappan and he has admitted that the amount shown in Ext.M101 is Rs. 20,000/- only. On this basis it was argued by the counsel that the transactions referred to in the charge is not one that is spoken to by the witness but some other transaction. It is difficult to accept this argument of the counsel. True, in Ext.M101 the amount drawn is shown as Rs. 20,000/-. During his examination the witness has stated initially that Rs. 20,000/- has been taken out from his account without permission. However, when Ext.M102 was put to the witness he has asserted that this statement was given by him. In this he had specifically stated that the petitioner had informed him

that Rs. 2,00,000/- has been taken from his account and also stated that the petitioner has compelled him to accept Rs. 2,00,000/- . In fact the knowledge of the witness regarding the exact amount collected by the petitioner through the loan account created in the name of the witness is only based on information and if he has committed any mistake in giving the exact amount he cannot be found fault with. What is material is that the witness had in undoubted terms stated that he never opened a loan account on his own and it is only when the petitioner approached him with family, probably after investigation was started, that he came to know that such an account has been created. The witness has gone to the bank with the Fixed Deposit Receipt with him and has collected the entire amount of Rs. 4,00,000/- with interest payable on it. It was thereafter the petitioner had approached him with the amount. The witness has stated that he was not willing to accept the amount but it was thrust on him by the petitioner who wanted to silence the witness by this money. The witness has further stated that after he came to know about the misdeed of the petitioner from the Branch Manager he had given back the amount. The counsel for the petitioner has argued that as per his statement the witness had immediately repaid the sum of Rs. 2,00,000/- to the petitioner but according to his oral evidence it was not immediately but after 18.05.2010 and that also Rs. 1,00,000/- to the mother and Rs. 1,00,000/- to the father-in-law. Even this, I am not able to accept as a contradiction at all. For one thing it is not stated in Ext.M102 that it was given back immediately. It merely stated that it was given back. Anyhow the word “immediately” is relative and the period intended depends upon the circumstances. It does not necessarily mean at the same instance.

30. Another argument that is advanced on behalf of the petitioner against accepting the evidence of Vanathu Chinnappan is the closure of the loan account. The witness has admitted during his cross-examination that Ext.W40 contains his signature. This is the voucher for closing the loan account. However, the witness has stated that he did not go to the Bank to close the account though he has put his signature. He has stated that he did not remit any money in the Bank at all. The argument on behalf of the petitioner is that the witness himself has reached the bank, remitted the amount and closed the loan account. On the side of the petitioner, DW1 a staff of the bank was examined. This witness has stated that Vanathu Chinnappan himself had come to the Bank and remitted the amount. The very nature of evidence of DW1 would show that he could not be telling the truth. In the usual course it is unlikely for a staff of the Bank who is dealing with several customers daily to remember about the transactions carried out by these persons each day. There is no case for DW1 that he had previous knowledge of Vanathu Chinnappan. According to DW1, he remembers

about the closure of the account on 14.05.2011 since the Manager had told him on that day that Vanathu Chinnappan would be coming to close the account. He did not reveal why the Branch Manager was so particular to tell him about a particular customer who will be coming to close the account. The only conclusion that could be arrived is that DW1 who has carried out the transaction wanted to save himself and also to protect a colleague who might have been working with him for quite some time. It is the specific case of Vanathu Chinnappan that he gave back the amount to the petitioner through his relatives. The petitioner did not come forward to deny this case. There is nothing to disbelieve Vanathu Chinnappan who has stated that he did not open a loan account. So also there is no necessity to disbelieve the version of this witness that the petitioner had approached him and had been seeking his help or that he had given back the money and he came to know from the Manager about the atrocity committed by the petitioner. I am not inclined to accept the evidence of DW1 against the evidence of Vanathu Chinnappan. There is sufficient material to establish that the petitioner had opened a loan account in the name of Vanathu Chinnappan without his knowledge and had withdrawn the amount. The charge is found proved.

31. Charge No. 5 against the petitioner runs as below:

Charge No. 5

You have debited from the SB Account No. 30022379307 of Jayarani on 11.01.2010 with Rs. 14,000/- by using plain debit voucher and credited the same to your SB Account No. 30030909222. The signature of Smt. Jayarani as appearing in the debit voucher did not tally with the specimen signature as available in the branch records. The unauthorized transaction was put through by you under your ID for deriving pecuniary benefits.

32. There is no complaint from Jayarani who is said to be the sister of the petitioner himself. The voucher verification report dated 11.01.2010 marked as Ext.M175 shows that Rs. 14,000/- was debited from the account of Jayarani. The User ID for the transaction is that of the petitioner. Ext.M106 is the debit voucher regarding the transaction. The counsel for the Respondent has stated in the written submission that the forensic report has confirmed that the signature in the debit voucher is not that of Jayarani. Jayarani herself has not come forward accusing that amount was debited from her account unauthorizedly. Though it is seen from Ext.M93 that debit voucher marked as Ext.M106 also was sent for the opinion of the handwriting expert, the voucher itself does not show this. In the case of Ext.M94 and Ext.M95 referring to Gopal the signatures are marked as Q9 and Q10 respectively. On going through Ext.M106 I do not find any such marking given. In the report of the forensic expert there is no reference to the date of the document or the persons

involved but only the number given by them to the disputed signatures. So from Ext.M186, the report of the handwriting expert also it cannot be made out if the document was sent for expert opinion. So there is no evidence to show that the original of Ext.M106 was sent to the handwriting expert and opinion obtained. It has been asserted by the counsel for the petitioner in the written submission that there is no finding regarding Ext.M106 in the forensic report. When the circumstances I have already referred to above are considered this assertion is to be accepted. So there is total dearth of evidence against the petitioner regarding this charge also.

33. Charge No. 6 against the petitioner runs as below:

Charge No. 6

You have debited from the SB Account of Christuraj (Account No. 30159064313) on 13.01.2010 an amount of Rs. 20,000/- and credited the same to your SB Account No. 30030909222. The unauthorized transaction has been put through in your ID for deriving pecuniary benefits.

34. It is seen from Ex.M71 the statement of account of Christuraj that on 13.01.2010 Rs. 20,000/- has been debited from his account. The transaction is under the ID of the petitioner. The amount is seen transferred to Account No. 3003090922 which is the joint account of the petitioner and his wife. Ext.M110 is the transfer voucher regarding this transaction. No doubt the transaction is done in the ID of the petitioner and the amount is transferred to the joint account of the petitioner and his wife. But what is the evidence to show that this was done not by the concerned account holder, without his knowledge and unauthorisedly by the petitioner? The concerned account holder has not been examined in the enquiry proceedings. A complaint allegedly made by him has been marked in the enquiry proceedings and is marked here as Ext.M100. However, the reasoning given regarding Charge No. 3 for not relying upon the complaint is applicable to the charge under consideration also. The register does not show that the voucher was missing. If there was no voucher it should have referred to in the VVR Error Checking Register. Merely because the transaction has been carried out under the ID of the petitioner and the amount has been transferred to his own account it cannot be found that it is an unauthorized one. So this charge also is to be found not established.

35. Charge No. 7 against the petitioner runs as below:

Charge No. 7

You have debited from SB Account of Sri Rajarajendiran, Account No. 10577746446 on 12.01.2010 the amount of Rs. 16,000/- and credited the same to your SB Account No. 30030909222 without preparing any vouchers. The unauthorized

transactions has been put through by you in your ID for your pecuniary benefits.

36. It could be seen from Ext.M73 the SB Account of Rajarajendiran that Rs. 16,000/- has been debited from his account on 12.01.2010 and has been transferred to Account No. 30030909222. Ext.M74 is the statement of account of the petitioner showing that the amount of Rs. 16,000/- has been transferred to the account of the petitioner and that the transactions are carried out through the ID number of the petitioner himself. It is stated on behalf of the Respondents that no voucher has been prepared regarding the transaction. The transaction is not disputed by the petitioner. As could be seen, though the case is that the account of Rajarajendiran was unauthorisedly debited by the petitioner without any voucher the said Rajarajendiran did not come forward with a complaint. He has not been examined by the Management. He has not even given a written complaint to the bank. It is pointed out on behalf of the petitioner that though it is the case of the Management that there is no voucher for the transaction, the Error Checking Register which is marked as Ext.W19 does not indicate that there was any missing voucher. It is pointed out that in case the voucher is not available, the Officer who is making the verification on the day after the transaction would be making an entry of it and makes the necessary corrections. In the absence of this, there is no evidence to show that the transaction was done by the petitioner without any authorization by the concerned customer. This aspect becomes more relevant in the absence of any complaint from Rajarajendiran, the customer. So, though the amount has been transferred by the petitioner from the account of Rajarajendiran to his own account evidence is missing to show that it was done without any authorization.

37. Charge No. 8 against the petitioner runs as below:

Charge No. 8

You have not accounted for the amount of Rs. 2,000/- received by you from Magalir Mempattu Mandram on 31.08.2009 for credit of the ACC-SGSY Account No. 30520099606, but you have credited the same to the customer's account number only on 30.12.2009 after a gap of 4 months. Your above act tantamount to misappropriation of the customer's money.

38. Ext.M75 is the Screen Shot of the transaction in respect of Rs. 2,000/- in the account of Magalir Mempattu Mandram. The amount is seen credited to the account on 30.12.2009 in the ID number of the petitioner. The petitioner has remitted the amount by transferring from his account. He has stated that the amount was not credited on 31.08.2009 and so it was made good on the day of remittance i.e. 30.12.2009. Thus it could be seen from the very entry made by the petitioner in Ext.M75 that he has received the amount on 31.08.2009 and he has remitted it only on 30.12.2009.

39. It has been argued on behalf of the petitioner that the account holder has not made any complaint and was not examined also. According to the petitioner, the amount was remitted on 30.12.2009 with the permission of the Bank Manager. According to him, if the voucher relating to the transaction is produced it would show that the remittance was made with the approval of the Manager. It is also argued on behalf of the petitioner that in the daily banking transactions some inadvertent errors are bound to occur and no malafides can be attributed to the petitioner. It is also argued on behalf of the petitioner that the amount was deposited as insisted by the Branch Manager when the customer approached the Branch Manager with the complaint. It is very much apparent from Ext.M75 that the amount was remitted by the petitioner on 30.12.2009. What he has stated in Ext.M75 is that the amount was not remitted on 31.08.2009 and it was made good on 30.12.2009. This very much shows that though he has received the amount on 31.08.2009 it was not remitted by him and only when it came to light when the customer approached the Bank the petitioner has remitted the amount. At the same time Ext.M75 will not reveal that the remittance was made as insisted by the Branch Manager. When so much admission is made by the petitioner through Ext.M75 it is upon the petitioner to examine himself and show under what circumstances he has remitted the amount. Explanation during the argument without the petitioner coming forward to state his case will not justify the transaction. The petitioner has waited till the irregularity is noticed, to make remittance of the amount. If it was a mistake on his part he would have made the remittance immediately and would not have waited for 4 months to do that. I find that the charge is established.

40. Charge No. 9 against the petitioner runs as below:

Charge No. 9

You have debited in the account of Rajendra Cashews Cash Credit A/c No. 30303643366 an amount of Rs. 1,20,000/- on 21.10.2009 and credited the same to your wife's Smt. Lesy Josephine SB Account No. 30291553731 without preparation of any vouchers. The unauthorized transaction was put through by you under your ID for your pecuniary benefits.

41. Ext.M76 is the Cash Credit Account of Rajendra Cashew which shows that on 21.10.2009, Rs. 1,20,000 was debited from the account and transferred to Account No. 30291553731 by the petitioner through his ID number. Ext.M77 would show that the account to which the amount is transferred is that of Lesy Josephine, the wife of the petitioner. It is not in dispute that Lesy Josephine is the wife of the petitioner.

42. As in the case of other transactions the account holder did not make any complaint to the Bank regarding the transaction. The account holder had not been

examined. Though it is the case of the Respondent that the transaction has been carried out by the petitioner without preparing any voucher and without any authorization from the account holder, no evidence is available to prove this. The voucher verification report which is marked as Ext.M15 would not show that any voucher was missing. It was for the checking authorities to detect the missing of the voucher and take necessary corrective measures immediately. But there is no evidence to show that any voucher was missing. So there is no evidence to show that the transaction was carried out by the petitioner on his own without any authorization from the petitioner. In the absence of acceptable material, this charge against the petitioner is found not established.

43. Charge No. 10 against the petitioner runs as below:

Charge No. 10

You have unauthorizedly debited the Gold Loan Account of Sri Abel Account No. 30831352921 with Rs. 10,000/- on 21.01.2010 under your ID by means of Plain Debit Voucher and credited the same to SB Account No. 10577785500. The amount was withdrawn on the same day. The transaction is over and above the sanctioned limit. The unauthorized transaction was put through by you under your ID by misusing the Capability Level given to you for deriving pecuniary benefits.

44. Ext.M78 is the Screen Shot of the account of Abel showing the relevant transaction. It shows that on 21.01.2010 Rs. 10,000/- has been debited from the Loan Account of Abel through the ID number of the petitioner. Ex.M108 is the withdrawal slip for the amount and Ext.M109 is the credit voucher. The transaction is not in dispute.

45. Apparently the amount of Rs. 10,000/- debited from the Gold Loan Account of Abel has gone to his own SB account. The case is that the transaction was not in the Capability Level of the petitioner and it is over and above the sanctioned limit. There is nothing to show that the petitioner has exceeded his Capability Level in carrying out the transaction. Vouchers regarding the transaction are available. There is nothing to show that these are not vouchers signed by the account holder. The account holder has not been examined in this respect. The charge itself is not very clear. It is stated in the charge that the amount was withdrawn on the same day. However, it is not specifically stated whether the withdrawal was by the account holder or by the petitioner. The only charge specifically leveled against the petitioner is that he carried out the transaction by misusing the Capability Level. However, it is pointed out that the petitioner as Cash Officer was in Level-7 and he had unlimited power to allow operation of the Account. There is no evidence to show that the petitioner had committed any irregularity regarding this transaction. The charge is not proved.

46. Charge No. 11 against the petitioner runs as below:

Charge No. 11

You have transferred under your ID an amount of Rs. 48,000/- from Account No. 30303643366 of Rajendra Cashews, a CC Limit Account and Rs. 50,000/- from SB Account of Sri A. Arul Doss, Account No. 30033943239 by means of Plain Debit Vouchers and credited the same to your SB Account No. 30030909222 on 11.11.2009. The unauthorized transactions were put through by you under your ID for deriving pecuniary benefits.

47. Ext.M80 is the screen shot showing the transaction of Rs. 48,000/- from the account of Rajendra Cashews through the ID of the petitioner on 11.11.2009. The amount seems to have been withdrawn in cash. Ext.M81 is the screen shot showing that the account of Arul Doss was debited by Rs. 50,000/- on the same date through the ID of the petitioner. Ext.M82 is the screen shot showing that on 11.11.2009 Rs. 98,000/- was credited to the account of the petitioner. The case of the Management is that the petitioner unauthorizedly debited the accounts of Rajendra Cashews and Arul Doss and remitted the amount to his own account on the same day.

48. According to the counsel for the petitioner, there is no evidence available to show that these amounts were unauthorizedly debited by the petitioner and remitted to his account. According to him, the concerned vouchers were signed by the concerned account holders. The account holders did not make any complaint to the Bank. Ext.M111 is the debit slip in the name of Rajendra Cashews and Ext.M115 is the debit slip in the name of Arul Doss. In the absence of complaint from the account holders there is no material to show if these debit slips were not signed by the account holders.

49. The counsel for the Management has stated that the concerned signatures were sent for the opinion of the handwriting expert and these vouchers were found to be not of the account holders. Ext.M93 the letter from the Manager of Panruti Branch to the Forensic Science Department would show that the debit slips including the two debit slips dated 11.11.2009 in the name of Rajendra Cashews and Arul Doss also were sent for the opinion of handwriting expert along with the other documents containing the admitted signatures of these two persons. However, it could not be made out from Ext.M186 the report of the forensic expert if these two documents were compared and opinion rendered. Disputed vouchers in respect of seven account holders are seen sent to the forensic expert for opinion. The forensic expert has given opinion regarding the signatures of four persons only. It is not clear from the report which are the signatures that were compared and which were the signatures from which it was not possible to draw any reliable opinion. Ext.111 and Ext.M115 do not contain any marking to show that

these were marked as disputed signatures and compared. As pointed out earlier, in the case of Gopal the signatures are seen given the marking Q while there is no such marking in Ext.M111 and Ext.M133. The copies of the questioned documents are not either sent back by the forensic department to the Branch Manager or are not produced alongwith the report resulting in disadvantage in finding out whether these were compared at all. So this charge also remains un-established.

50. Charge No. 12 against the petitioner runs as below:

Charge No. 12

An educational term loan was sanctioned to Sri Britto, Account No. 30875890174. An amount of Rs. 60,000/- was disbursed on 01.10.09 and credited to SB Account of Sri Britto. You have transferred an amount of Rs. 50,000/- from the SB Account of Britto to your OD Account 10577744314 under your ID. The transactions were put through without preparation of any vouchers. The unauthorized transactions were put through your ID for deriving pecuniary benefits.

51. As seen from Ext.M83 Rs. 50,000/- from the account of Britto has been debited by transfer through the ID Number of the petitioner. Ext.M84 shows that the amount was transferred to the account of the petitioner. Ext.M180 the Voucher Verification Report also reveals the transfer through the ID of the petitioner. Ext.M181 is the Voucher Verification Report in respect of the account of the petitioner. This also reveals the transaction.

52. The same argument that is raised in respect of other transactions is advanced on behalf of the petitioner regarding this charge also. There is no complaint from the account holder regarding withdrawal from his account unauthorizedly by the petitioner. The account holder has not been examined. According to the petitioner if the debit and credit vouchers of the respective accounts are produced it would have been revealed that the petitioner has not done anything irregular. It is pointed out that the voucher verification report does not show that any voucher was missing. Only because the transaction was carried out through the ID of the petitioner and because the amount has been transferred to the ID of the petitioner it cannot be stated that the petitioner has done it unauthorizedly and fraudulently for his own pecuniary benefits. It is again pointed out on behalf of the petitioner that the account of Britto is only an SB account and not educational loan account. The material available are not sufficient to prove this charge also.

53. I have found charges 1, 2, 4 and 8 proved. The counsel for the petitioner has argued that the charges against the petitioner did not result in any loss to the Bank even if found true. He has further argued that the acts of the petitioner, if any, are not prejudicial to the

interests of the Bank. According to him, most of the charges, if proved, amount to only minor misconducts as enumerated under Clause-7 of the settlement and so only punishments other than dismissal, discharge or compulsory retirement shall be given to the petitioner. The counsel for the Respondent has referred to two decisions of the Apex Court, the STATE BANK OF INDIA AND ANOTHER Vs. BELA BAGCHI AND OTHERS reported in 2005 7 SCC 435 and DISCIPLINARY AUTHORITY-CUM-REGIONAL MANAGER AND OTHERS Vs. NIKUNJA BIHARI PATNAIK reported in 1996 9 SC 69 in this respect. In both cases it has been held by the Apex Court that absence of loss is not necessary in such cases. So whether loss has occurred to the Bank or not is not a criteria in deciding the punishment.

54. It has also been argued on behalf of the petitioner that in any case the Court has got sufficient power to interfere with the quantum of punishment and considering that the petitioner has got several years of service, that the acts of the petitioner did not result in any loss to the Bank and the charges did not lower the esteem of the Bank a lesser punishment is to be imposed on the petitioner.

55. The petitioner has been put in a position which requires utmost honesty. He was bound to work for the Respondent in a manner beyond suspicion. He was dealing with the money of the public. The very fact that he has been meddling with the amount of the customers is sufficient to impose on him a major punishment. Even those charges which are not sufficiently established do not put him beyond the shadow of suspicion. True, the Bank was not able to prove those charges. However, there is sufficient reason for the Bank to lose its faith on the petitioner. In most of the charges, it is alarming to notice that money has gone from the account of the customers to the account of the petitioner through his own ID. The transactions as per Charges 3, 5, 6 7, 11 and 12 were carried out in the ID of the petitioner and the amount debited from the customer's account had gone to the account of petitioner. So far as charge No. 9 is concerned, this transaction was also carried out by the petitioner and the amount had gone to the account of the wife of the petitioner. In spite of such specific charges the petitioner has not cared to give any explanation except giving a one sentence denial in Ext.W3. By way of explanation to the Charge Memo he has just stated that he is denying all the irregularities alleged against him. If the petitioner wanted the Bank to regain its faith in him it was for him to get into the witness box and state under which circumstances the amounts were transferred to his own account. The transactions having been carried out by him and the amounts having gone to his own account, he is only one and the proper person who could have explained how and why these transactions were carried out. It is only natural that the Bank has lost faith in the petitioner. However, considering that all the charges alleged are not established

the punishment is modified to compulsory retirement from service. Accordingly an award is passed as below:

The punishment imposed on the petitioner is modified to Compulsory Retirement from Service. The reference is answered accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ext.W1	15.02.2010	Suspension Order
Ext.W2	24.06.2011	Charge Memo
Ext.W3	08.06.2011	Explanation of Charge Memo
Ext.W4	-	Enquiry Proceeding
Ext.W5	03.03.2012	Enquiry Report
Ext.W6	15.15.2012	Reply for Enquiry Report
Ext.W7	10.09.2012	Second Show Cause Notice
Ext.W8	18.09.2012	Reply for Second Show Cause Notice
Ext.W9	27.09.2012	Order of First Respondent
Ext.W10	07.11.2012	Appeal petition to Appellate Authority
Ext.W11	24.01.2013	Order of the Second Respondent
Ext.W12	24.06.2013	Petition filed by petitioner before A.C.L.
Ext.W13	07.09.2013	Counter filed by Respondent before A.C.L.
Ext.W14	-	Voucher
Ext.W15	-	Voucher Verification Report
Ext.W16	-	Screen Shot of Account
Ext.W17	-	Credit Voucher
Ext.W18	-	Statement of Account
Ext.W19	-	Checking Error Register
Ext.W20	24.06.2011	Defence Brief

Documents Marked:

On the Management's side

Ex.No. Date Description

Ext.M1 29.08.2007 Screen Shot Transaction for Rs. 3.00 lakhs relates to A/c. No. 1057744314 of A. Savarinathan

Ext.M2	14.11.2007	Screen Shot Transaction for Rs. 2.00 lakhs – A/c. No. 10577744314 – A. Savarinathan	Ext.M18	07.01.2009	Screen Shot of Transaction for Rs. 1,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M3	03.04.2009	Screen Shot of transaction for Rs. 3.00 lakhs – A/c No. 10577744314 – A. Savarinathan	Ext.M19	10.01.2009	Screen Shot of Transaction for Rs. 2,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M4	04.09.2008	Screen Shot of transaction for Rs. 2,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M20	29.01.2009	Screen Shot of Transaction for Rs. 3,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M5	23.09.2008	Screen Shot of Transaction for Rs. 2,500/- A/c No. 10577744314 – A. Savarinathan	Ext.M21	06.03.2009	Screen Shot of Transaction for Rs. 4,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M6	22.10.2008	Screen Shot of Transaction for Rs. 2,500/- A/c No. 10577744314 – A. Savarinathan	Ext.M22	26.03.2009	Screen Shot of Transaction for Rs. 7,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M7	28.10.2008	Screen Shot of Transaction for Rs. 3,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M23	31.03.2009	Screen Shot of Transaction for Rs. 600/- A/c No. 10577744314 – A. Savarinathan
Ext.M8	05.11.2008	Screen Shot of Transaction for Rs. 3,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M24	28.04.2009	Screen Shot of Transaction for Rs. 7,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M9	06.11.2008	Screen Shot of Transaction for Rs. 3,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M25	30.04.2009	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M10	08.11.2008	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M26	30.04.2009	Screen Shot of Transaction for Rs. 22,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M11	15.11.2008	Screen Shot of Transaction for Rs. 2,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M27	02.05.2009	Screen Shot of Transaction for Rs. 20,500/- A/c No. 10577744314 – A. Savarinathan
Ext.M12	20.11.2008	Screen Shot of Transaction for Rs. 25,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M28	06.05.2009	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M13	27.11.2008	Screen Shot of Transaction for Rs. 10,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M29	21.05.2009	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M14	20.12.2008	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M30	26.05.2009	Screen Shot of Transaction for Rs. 10,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M15	22.12.2008	Screen Shot of Transaction for Rs. 2,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M31	27.05.2009	Screen Shot of Transaction for Rs. 50,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M16	23.12.2008	Screen Shot of Transaction for Rs. 7,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M32	13.06.2009	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M17	26.12.2008	Screen Shot of Transaction for Rs. 20,000/- (Two transactions)- A/c. No. 10577744314– A. Savarinathan	Ext.M33	22.06.2009	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan

Ext.M34	25.09.2009	Screen Shot of Transaction for Rs. 9,000/- - A/c No. 10577744314 – A. Savarinathan	Ext.M49	18.09.2009	Screen Shot of Transaction for Rs. 10,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M35	03.07.2009	Screen Shot of Transaction for Rs. 90,000/- - A/c No. 10577744314 – A. Savarinathan	Ext.M50	22.09.2009	Screen Shot of Transaction for Rs. 4,500/- A/c No. 10577744314 – A. Savarinathan
Ext.M36	07.07.2009	Screen Shot of Transaction for Rs. 4,000/- - A/c No. 10577744314 – A. Savarinathan	Ext.M51	23.09.2009	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M37	17.07.2009	Screen Shot of Transaction for Rs. 10,500/- - A/c No. 10577744314 – A. Savarinathan	Ext.M52	26.09.2009	Screen Shot of Transaction for Rs. 1,00,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M38	05.08.2009	Screen Shot of Transaction for Rs. 6,000/- - A/c No. 10577744314 – A. Savarinathan	Ext.M53	03.10.2009	Screen Shot of Transaction for Rs. 1,00,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M39	08.08.2009	Screen Shot of Transaction for Rs. 10,000/- - A/c No. 10577744314 – A. Savarinathan	Ext.M54	05.10.2009	Screen Shot of Transaction for Rs. 3,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M40	12.08.2009	Screen Shot of Transaction for Rs. 20,000/- and Rs. 20,000/- - A/c No. 10577744314 – A. Savarinathan	Ext.M55	06.10.2009	Screen Shot of Transaction for Rs. 50,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M41	14.08.2009	Screen Shot of Transaction for Rs. 2,000/- and Rs. 5,000/- - A/c No. 10577744314 – A. Savarinathan		08.10.2009	Screen Shot of Transaction for Rs. 3,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M42	17.08.2009	Screen Shot of Transaction for Rs. 1,00,000/- - A/c No. 10577744314 – A. Savarinathan		08.10.2009	Screen Shot of Transaction for Rs. 13,500/- A/c No. 0577744314 – A. Savarinathan
Ext.M43	21.08.2009	Screen Shot of Transaction for Rs. 5,000/- - A/c No. 10577744314 – A. Savarinathan	Ext.M56	07.10.2009	Screen Shot of Transaction for Rs. 1,500/- A/c No. 10577744314 – A. Savarinathan
Ext.M44	24.08.2009	Screen Shot of Transaction for Rs. 7,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M57	08.10.2009	Screen Shot of Transaction for Rs. 3,000/- A/c No. 10577744314 – A. Savarinathan
	25.08.2009	Screen Shot of Transaction for Rs. 7,000/- A/c No. 10577744314 – A. Savarinathan		08.10.2009	Screen Shot of Transaction for Rs. 6,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M45	25.08.2009	Screen Shot of Transaction for Rs. 500/- and Rs. 500/- - A/c No. 10577744314 – A. Savarinathan		08.10.2009	Screen Shot of Transaction for Rs. 10,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M46	26.08.2009	Screen Shot of Transaction for Rs. 20,250/- A/c No. 10577744314 – A. Savarinathan	Ext.M58	10.10.2009	Screen Shot of Transaction for Rs. 50,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M47	28.08.2009	Screen Shot of Transaction for Rs. 3,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M59	12.10.2009	Screen Shot of Transaction for Rs. 15,000/- A/c No. 10577744314 – A. Savarinathan
Ext.M48	29.08.2009	Screen Shot of Transaction for Rs. 75,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M60	15.10.2009	Screen Shot of Transaction for Rs. 30,000/- A/c No. 10577744314 – A. Savarinathan

Ext.M61	24.10.2009	Screen Shot of Transaction for Rs. 10,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M76	21.10.2009	Screen Shot of Transaction for Rs. 1,20,000/- A/c No. 30303643366 – Type of A/c – CC/OD
Ext.M62	03.11.2009	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M77	21.10.2009	Screen Shot of Transaction for Rs. 1,20,000/- A/c No. 30291553731 – Type of A/c – SB
Ext.M63	12.11.2009	Screen Shot of Transaction for Rs. 5,000/- A/c No. 10577744314 – A. Savarinathan	Ext.M78	21.01.2010	Screen Shot of Transaction for Rs. 10,000/- A/c No. 30831352921 – Type of A/c – DL
Ext.M64	18.07.2009	Screen Shot of Transaction for Rs. 2,00,000/- A/c No. 30828940598 – Type of Account - DL	Ext.M79	21.01.2010	Screen Shot of Transaction for Rs. 10,000/- A/c No. 30831352921 – Type of A/c – SB
Ext.M65	13.11.2009	Screen Shot of Transaction for Rs. 6,06,812/- A/c No. 30475328073 – Type of A/c - STDR	Ext.M80	11.11.2009	Screen Shot of Transaction for Rs. 48,000/- A/c No. 30303643366 – Type of A/c – CC
Ext.M66	13.11.2009	Screen Shot of Transaction for Rs. 6,49,261/- A/c No. 10577761601 – Type of Account - SB	Ext.M81	11.11.2009	Screen Shot of Transaction for Rs. 50,000/- A/c No. 30033943329 – Type of A/c – SB
	16.11.2009	Screen Shot of Transaction for Rs. 2,00,000/- A/c No. 10577761601 – Type of A/c – SB	Ext.M82	11.11.2009	Screen Shot of Transaction for Rs. 50,000/- A/c No. 30030909222 – Type of A/c – SB
Ext.M67	16.11.2009	Screen Shot of Transaction for Rs. 2,00,000/- A/c No. 30828940598 – Type of A/c - DL	Ext.M83	01.10.2009	Screen Shot of Transaction for Rs. 50,000/- A/c No. 30875890174 – Type of A/c – SB
Ext.M68	29.09.2009	Screen Shot of Transaction for Rs. 2,00,000/- A/c No. 30907138743 – Type of A/c – DL	Ext.M84	01.10.2009	Screen Shot of Transaction for Rs. 50,000/- A/c No. 10577744314 – Type of A/c – OD
Ext.M69	11.01.2010	Screen Shot of Transaction for Rs. 14,000/- A/c No. 30022379307 – Type of A/c – SB	Ext.M85	13.11.2009	Screen Shot of Transaction for Rs. 6,06,812/- A/c No. 30475328073 – Type of A/c – STDR
Ext.M70	11.01.2010	Screen Shot of Transaction for Rs. 14,000/- A/c No. 30030909222 – Type of A/c - SB	Ext.M86	13.11.2009	Screen Shot of Transaction for Rs. 2,00,000/- and Rs. 2,50,000/- A/c No. 10577761601 – Type of A/c – SB
Ext.M71	13.01.2010	Screen Shot of Transaction for Rs. 20,000/- A/c No. 30159064313 – Type of A/c – SB	Ext.M87	13.06.2005	Account Opening Form (Two Pages)
Ext.M72	13.01.2010	Screen Shot of Transaction for Rs. 20,000/- A/c No. 30030909222 – Type of A/c – SB	Ext.M88	20.09.2005	Personal Loan Sanction Letter for Rs. 2,00,000/-
Ext.M73	12.01.2010	Screen Shot of Transaction for Rs. 16,000/- A/c No. 10577746446 – Type of A/c – SB	Ext.M89	01.12.2008	STDR Receipt for Rs. 6,06,812/- with value dated 29.11.2008
Ext.M74	12.01.2010	Screen Shot of Transaction for Rs. 16,000/- A/c No. 30030909222 – Type of A/c – SB	Ext.M90	11.11.2009	Explanation letter for excess drawing
Ext.M75	30.12.2009	Screen Shot of Transaction for Rs. 2,000/- A/c No. 30520099606 – Type of A/c – SHG CC/OD	Ext.M91	25.11.2009	Letter submitted by Sri A. Savarinathan to Branch Manager, Panruttி
			Ext.M92	02.08.2010	Acknowledgement from Forensic Sciences Department, Chennai addressed to the Branch Manager, Panruttி

Ext.M93	02.08.2010	Letter addressed to the Assistant Director, Forensic Sciences Department, Chennai-4 by the Branch Manager, Panrutt (Four Pages)	Ext.M109	21.01.2010	Credit Voucher for Rs. 10,000/- in the name of Sri A. Abel A/c No. 10577785500
Ext.M94	13.11.2009	Withdrawal slip for Rs. 2,50,000/- pertaining to A/c No. 10577761601	Ext.M110	-	A transfer debit voucher for Rs. 20,000 pertaining to A/c No. 30030909222
Ext.M95	13.11.2009	Withdrawal slip for Rs. 2,00,000/- pertaining to A/c No. 10577761601	Ext.M111	11.11.2009	Plain Debit Voucher No. 30303643366 of Rajendra Cashew
Ext.M96	11.11.2009	Plain Debit Voucher for Rs. 48,000/- pertaining to A/c No. 30303643366	Ext.M112	13.11.2009	A withdrawal voucher for Rs. 2,50,000/- pertains to A/c No. 10577761601
Ext.M97	11.11.2009	Plain Debit Voucher for Rs. 50,000/- pertaining to A/c No. 30033943239	Ext.M113	16.11.2009	A withdrawal voucher for Rs. 2,00,000/- pertains to A/c No. 10577761601
Ext.M98	19.01.2010	Plain Debit Voucher for Rs. 10,000/- pertaining to A/c No. 30831352921	Ext.M114	13.11.2009	A withdrawal voucher for Rs. 2,00,000/- pertains to A/c No. 10577761601
Ext.M99	11.01.2010	Plain Debit Voucher for Rs. 14,000/- pertaining to A/c No. 30022379307	Ext.M115	11.11.2009	Plain Debit Voucher for Rs. 50,000/- pertains to A/c No. 3003394239
Ext.M100	31.03.2010	Written Statement of Sri D. Christhuraj (2 pages) addressed to the Branch Manager, Panrutt	Ext.M116	04.09.2008	Voucher Verification Report of Checker ID 3587754 taken from branch report (Branch Code 2251) pertains to the transaction amount of Rs. 2,000/- withdrawal transfer of A/c No. 10577744314
Ext.M101	18.05.2009	Written Statement of Sri R. Vanathu Chinnappan addressed to Branch Manager, Panrutt (2 pages)	Ext.M117	23.09.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 2,500/- withdrawal transfer of A/c No. 10577744314
Ext.M102	-	Written Statement of Sri Vanathu Chinnappan addressed to Branch Manager, Panrutt	Ext.M118	22.10.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 2,500/- withdrawal transfer of A/c No. 10577744314
Ext.M103	20.02.2010	During Preliminary Investigation, Statement given by Sri S. Seshadri, Deputy Manager (Adv.) (2 pages)	Ext.M119	28.10.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 3,000/- withdrawal transfer of A/c No. 10577744314
Ext.M104	20.02.2010	During Preliminary Investigation, Statement given by Sri K.P. Jayabalan, Assistant Manager	Ext.M120	05.11.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 3,000/- withdrawal transfer of A/c No. 10577744314
Ext.M105	20.02.2010	During Preliminary Investigation, Statement given by Sri S. Arumugam	Ext.M121	06.11.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 3,000/- withdrawal transfer of A/c No. 10577744314
Ext.M106	11.01.2010	Plain Debit Voucher for Rs. 14,000/- and the debit confirmed by Smt. Y. Jayarani			
Ext.M107	19.01.2009	Plain Debit Voucher for Rs. 10,000/- pertaining to A/c No. 30831352921			
Ext.M108	21.01.2010	Withdrawal for Rs. 10,000/- pertaining to A/c No. 10577785500			

Ext.M122	08.11.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 5,000/- withdrawal transfer of A/c No. 10577744314	Ext.M132	30.04.2009	Voucher Verification report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 5,000/- cash withdrawal of A/c. No. 10577744314
Ext.M123	15.11.2008	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 2,000/- withdrawal transfer of A/c No. 10577744314	Ext.M133	30.04.2009	Voucher Verification report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 22,000/- cash withdrawal of A/c. No. 10577744134
Ext.M124	20.11.2008	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 25,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M134	02.05.2009	Voucher Verification Report of Checker ID no. 3582876 pertains to the transaction amount of Rs. 20,500/- cash withdrawal of A/c. No. 10577744314
Ext.M125	27.11.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 10,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M135	06.05.2009	Voucher Verification report of Checker ID 3035719 pertains to the transaction amount of Rs. 5,000/- cash withdrawal of A/c. No. 10577744314
Ext.M126	20.12.2008	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 5,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M136	21.05.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 5,000/- withdrawal transfer of A/c. No. 10577744314
Ext.M127	22.12.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 2,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M137	27.05.2009	Voucher Verification Report of Checker ID 3035719 pertains to the transaction amount of Rs. 50,000/- withdrawal transfer of A/c. No. 10577744314
Ext.M128	23.12.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 7,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M138	22.06.2009	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 5,000/- withdrawal transfer of A/c. No. 10577744314
Ext.M129	06.03.2009	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 4,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M139	04.07.2009	Voucher Verification report of Checker ID 1478176 pertains to the transaction amount of Rs. 4,000/- cash withdrawal of A/c. No. 10577744314
Ext.M130	26.03.2009	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 7,000/- withdrawal transfer of A/c. No. 10577744134	Ext.M140	05.08.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 6,000/- withdrawal transfer of A/c. No. 10577744314
Ext.M131	28.04.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 7,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M141	08.08.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 10,000/- withdrawal transfer of A/c. No. 10577744314

Ext.M142	12.08.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 20,000/- cash withdrawal of A/c. No. 10577744314	Ext.M152	22.09.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 4,500/- cash withdrawal of A/c. No. 10577744314
Ext.M143	12.08.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 20,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M153	23.09.2009	Voucher Verification Report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 5,000/- withdrawal transfer of A/c. No. 10577744314
Ext.M144	14.08.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 2,000/- and Rs. 5,000/- cash withdrawal of A/c. No. 10577744314	Ext.M154	26.09.2009	Voucher Verification Report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 1,00,000/- withdrawal transfer of A/c. No. 10577744314
Ext.M145	17.08.2009	Voucher Verification report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 1,00,000/- debit of A/c. No. 10577744134	Ext.M155	03.10.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 1,00,000/- cash withdrawal of A/c. No. 10577744314
Ext.M146	21.08.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 5,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M156	05.10.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 3,000/- cash withdrawal of A/c. No. 10577744134
Ext.M147	24.08.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 7,000/- cash withdrawal of A/c. No. 10577744314	Ext.M157	06.10.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 3,000/- : Rs. 13,500/- & Rs. 50,000/- cash withdrawal of A/c. No. 10577744314
Ext.M148	25.08.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 7,000/- cash withdrawal and Rs. 500/- and Rs. 500/- withdrawal transfer of A/c. No. 10577744314	Ext.M158	07.10.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 1,500/- withdrawal transfer of A/c. No. 10577744314
Ext.M149	26.08.2009	Voucher Verification Report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 20,250/- withdrawal transfer of A/c. No. 10577744314	Ext.M159	08.10.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 3,000/-, Rs. 6,000/- cash withdrawal and Rs. 10,000/- withdrawal transfer of A/c. No. 10577744314
Ext.M150	28.08.2009	Voucher Verification Report of Checker ID 3582876 pertains to the transaction amount of Rs. 3,000/- cash withdrawal of A/c. No. 10577744314	Ext.M160	10.10.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 50,000/- cash withdrawal of A/c. No. 10577744314
Ext.M151	18.09.2009	Voucher Verification report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 10,000/- cash withdrawal of A/c. No. 10577744314	Ext.M161	12.10.2009	Voucher Verification Report of Checker ID No. 3582876 pertains to the transaction amount of

Ext.M162	15.10.2009	Rs. 15,000/- withdrawal transfer of A/c. No. 10577744134	Ext.M172	13.11.2009	Voucher Verification report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 6,49,261/- dep. Transfer of A/c. No. 10577761601
Ext.M163	24.10.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 30,000/- withdrawal transfer of A/c. No. 10577744134	Ext.M173	16.11.2009	Voucher Verification report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 2,00,000/- withdrawal transfer of A/c. No. 10577761601
Ext.M164	03.11.2009	Voucher Verification Report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 10,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M174	29.09.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 2,00,000/- cash adv. of A/c. No. 30907138743
Ext.M165	12.11.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 5,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M175	11.01.2010	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 14,000/- Dr. withdrawal transfer of A/c. No. 30022379307 & Rs. 14,000/- Cr. Dep. Tr of A/c. No. 30030909222
Ext.M166	03.07.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 90,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M176	13.01.2010	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 20,000/- Dr. withdrawal transfer of A/c. No. 30159064313 and Rs. 20,000 Cr. Dept. of A/c. No. 30030909222
Ext.M167	17.07.2009	Voucher Verification Report of Checker ID No. 1478176 pertains to the transaction amount of Rs. 10,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M177	30.12.2009	Voucher Verification report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 2,000/- dep. transfer of A/c. No. 3052009606
Ext.M168	31.03.2009	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 600/- withdrawal transfer of A/c. No. 1057774414	Ext.M178	11.11.2009	Voucher Verification report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 48,000/- Dr. Debit of A/c. No. 300303643366 and Rs. 50,000 Dr. Debit of A/c. No. 30033943329
Ext.M169	26.12.2008	Voucher Verification Report of Checker ID No. 3035719 pertains to the transaction amount of Rs. 20,000/- & Rs. 20,000/- withdrawal transfer of A/c. No. 10577744314	Ext.M179	11.11.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 98,000/- Credit of A/c. No. 30030909222
Ext.M170	18.07.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 2,00,000/- cash adv. of A/c. No. 30828940598	Ext.M180	01.10.2009	Voucher Verification report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 50,000/- withdrawal transfer of A/c. No. 30875890174
Ext.M171	13.11.2009	Voucher Verification report of Checker ID No. 3582876 pertains to the transaction amount of Rs. 6,49,261/- closed transfer of A/c. No. 30475328073			

Ext.M181	01.10.2009	Voucher Verification report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 50,000/- dep.Transfer of A/c. No. 10577744314	Ext.M194	10.10.2009	Plain Debit Cash Voucher for Rs. 50,000/- in respect of account No. 10577744314
Ext.M182	13.11.2009	Voucher Verification Report of Checker ID No. 3587754 pertains to the transaction amount of Rs. 2,00,000/- and Rs. 2,50,000/- cash transfer of A/c. No. 10577761601	Ext.M195	06.10.2009	Plain Debit Cash Voucher for Rs. 3,000/- in respect of A/c. No. 10577744314
Ext.M183	-	Screenshot taken under ID No. 2980320 pertaining to the specimen signature of A/c. No. 30159064313	Ext.M196	06.10.2009	Plain Debit Cash Voucher for Rs. 50,000/- in respect of A/c. No. 10577744314
Ext.M184	-	Screenshot of A/c. No. 30022379307 taken under ID 2980320	Ext.M197	23.12.2008	Credit Voucher for Rs. 7,000/- in respect of 30030909222
Ext.M185	-	The Screenshot taken under ID 2980320 pertaining to specimen signature of A/c. No. 10577785500	Ext.M198	24.10.2009	Plain Debit Transfer Voucher for Rs. 10,000/- in respect of A/c. No. 10577744314
Ext.M186	31.08.2010	Forensic Report No. 246/2010 submitted by the Assistant Director, Forensic Science Department, Chennai-4 containing 5 pages	Ext.M199	24.10.2009	Credit Transfer Voucher for Rs. 10,000/- in respect of A/c. No. 30030909222
Ext.M187	-	Statement of Account of A/c. No. 10577744314 of Sri A. Savarinathan starting from 01.08.2007 to 31.12.2010 (Pages 16)	Ext.M200	15.10.2009	Plain Debit Cash Voucher for Rs. 30,000/- in respect of A/c. No. 10577744314
Ext.M188	16.11.2009	A cash withdrawal voucher for Rs. 2,00,000/- pertaining to A/c. No. 10577761601 numbering as 24610	Ext.M201	05.10.2009	Plain Debit Cash Voucher for Rs. 3,000/- in respect of A/c. No. 10577744314
Ext.M189	24.03.2008	Cash withdrawal voucher for Rs. 50,000/- in respect of A/c. No. 10577761601 numbered as 246/12/A 14 by Forensic Department	Ext.M202	08.08.2009	A withdrawal voucher for Rs. 10,000/- pertaining to the A/c. No. 30030909222
Ext.M190	24.01.2008	A cash deposit voucher for Rs. 5,00,000/- in respect of 10577761601 numbered as 246/10/ A 13 by Forensic Department	Ext.M203	22.10.2010	A written statement signed by Sri R. Gopal which was witnessed by Sri R.G. Rajendran, South Sathupattu, Panruttu in respect of following accounts <ul style="list-style-type: none">· SB A/c 10577761601· STDR A/c. No. 30522838718· STDR A/c. No. 30473918019· STDR A/c. No. 30475328073
Ext.M191	23.12.2008	Plain Debit Voucher for Rs. 7,000/- pertaining to Account No. 10577744314	Ext.M204	17.11.2009	VVR taken from Checker ID No. 3587754 for Rs. 6,00,000/- cash deposit in respect of A/c. No. 30960374436
Ext.M192	20.12.2008	Plain Debit Voucher for Rs. 5,000/- pertains to the account No. 10577744314	Ext.M205	24.09.2010	A Screen Shot of Deposit transaction enquiry relating to A/c. No. 30960374436 in the name of Sri R. Gopal for Rs. 6,94,250/- with the narration of “premature closure”
Ext.M193	-	Transfer Credit Voucher for Rs. 5,000/- in respect of account no. 30030909222			

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2267.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 7/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2015 को प्राप्त हुआ था।

[सं. एल-12012/83/2014-आईआर (बी-1)]

विनय कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2015

S.O. 2267.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 7-12-2015.

[No. L-12012/83/2014-IR (B-I)]

VINAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 19th November, 2015

Present :

K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 7/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and Another and their workman)

BETWEEN:

Sri R. Kesavan : 1st Party/Petitioner

AND

1. The Regional Manager : 2nd Party/1st Respondent
State Bank of India,
Chennai-600001
2. The Branch Manager : 2nd Party/2nd Respondent
State Bank of India,
Thirupathur,
Vellore District

Appearance :

For the 1st Party/ Petitioner : M/s S.V. Karthikeyan, R. Elçabéth, Advocates

For the 2nd Party/ Management : Sri S. Ravindran, S. Bazeer Ahmad, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-12012/83/2014-IR (B.I) dated 13.01.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether services of Sri R. Kesavan, temporary security guard worked on leave vacancies need to be regularised in the permanent post of Security Guard at State Bank of India, Tirupattur Branch or any other branch of the Bank. If not what is the relief to be given to Sri R. Kesavan?

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 7/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner are as below:

The petitioner who was working in the Indian Army had opted for Voluntary Retirement and was relieved from duty. The petitioner applied for the post of Security in the Tirupathur Branch of the First Respondent, the Second respondent and was appointed as Security on 01.05.2005. His salary calculated based on the number of duties he attended used to be remitted to his bank account maintained with the Second Respondent. After joining duty on 01.05.2005 the petitioner was regularly working as temporary security till 28.07.2006 and a certificate of temporary service was issued to the petitioner by the Second Respondent. He was again asked to work as Security and was continuously working from 05.01.2007 to 14.10.2012. In the year 2010 the persons working as temporary guards were called for interview and were made permanent by the First Respondent but the petitioner did not receive any intimation regarding such interview. In the year 2012 also the First Respondent had called for recommendations and particulars of the temporary guards fit for appointment as permanent guards. Though the Second Respondent informed the petitioner that his name was also forwarded to the First Respondent, the petitioner did not receive any call letter from the First Respondent. On enquiry the petitioner came to know that his name was not forwarded at all. On 14.10.2012 the petitioner was asked to relieve from duty, without any reason. The petitioner was working with the second Respondent on regular basis and had completed 240 days of service in all the calendar

years from 2005 to 2012. The order of termination of the petitioner on 14.10.2012 is illegal. The petitioner ought to have been regularised in the service of the First Respondent as permanent guard. An award may be passed directing the Respondents to reinstate the petitioner and regularise him in service with backwages, continuity of service and other attendant benefits.

4. The First Respondent has filed Counter Statement contending as below:

On exigencies the branches of the First Respondent used to engage temporary employees under certain circumstances. So far as recruitment of Security Guards are concerned there was an embargo on recruitment till 2008 and only from 2008 the recruitment process of Security Guards was started. The guidelines listed for recruitment of guards provides for eligibility criteria. Only candidates sponsored by Zila Sainik Board/Rajya Sainik Board from Ex-Servicemen would be considered for interview. The petitioner was engaged as temporary Security Guard by the Second Respondent. His name was sponsored by the Sainik Board for the first time only in 2012. However, his name could not be shortlisted as he was aged above 45 years. The petitioner was lastly employed on 14.10.2012 even according to him. So the question of regularisation could not be considered. Only temporary guards who are in service can be considered for regularisation. The petitioner is put to strict proof in respect of period of service and the days of work by him in each year. The petitioner is not entitled to any relief.

5. The Second Respondent has filed Counter Statement in tune with the Counter Statement filed by the First Respondent.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W6 and Ext.M1 to Ext.M5.

7. The points for consideration are:

- (i) Whether the claim of the petitioner to be regularised in the post of Security Guard with the First Respondent is justifiable?
- (ii) What if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner has claimed that he had been working as Temporary Security Guard with the Second Respondent from 01.05.2005 and except for a gap between 28.07.2006 and 05.01.2007 he had been working with the Second Respondent in this capacity until 14.10.2012 on which date he was orally terminated. According to the petitioner his termination is without any justification and he is entitled to be reinstated in service and regularised.

9. The statement made by the petitioner before the Labour Commissioner raising the dispute is not produced

before the Tribunal. However, on perusing the schedule of reference the case of the petitioner before the Labour Commissioner seems to have been that he was working as Temporary Security Guard on leave vacancies and is entitled to be regularised in the permanent post of Security Guard. The schedule of reference does not refer to reinstatement of the petitioner in service. In the Claim Statement there is no case that the petitioner was working on leave vacancies. His case is that he was continuously working with the Second Respondent. As stated earlier, the prayer of the petitioner in the Claim Statement includes a prayer for reinstatement in service also.

10. The petitioner has filed Proof Affidavit reiterating his case in his Claim Statement. In his Claim Statement and in the Proof Affidavit he has stated that he was engaged in duty for 180 days during the period from 2005 to 2006 and was again called in service in the year 2007. According to him, he was engaged in temporary service of 221 days in the year 2008, 308 days in the year 2009, 295 days in 2010, 385 days in the year 2011 and 241 days in the year 2012 till 14.10.2012 the date on which he was orally terminated.

11. To prove his period of service, the petitioner has produced Ext.W4, a certificate regarding his service issued by the second Respondent, Ext.W5 said to be the extract of Attendance Note Book and Extr.W6 the extract of the Bank Account of the petitioner. Ext.W4 would show that the petitioner had worked for 99 days with the Second Respondent for the period from 01.05.2005 to 31.12.2005 and for 81 days for the period from 06.01.2006 to 28.07.2006. This document is a certificate of temporary service issued by the Chief Manager, Tirupathur branch. Ext.W5 is the document described as Attendance Note Book containing the signature of the petitioner and the seal of the Second Respondent. It could be seen from this that he had worked for three months in 2007 and also during the entire period from 2008 until August 2012. His signature on daily basis is seen in this document. Mostly he seems to have been working in the place of those persons who were on leave. He has stated during his cross-examination that other names found in the document are that of permanent Security Guards.

12. According to the Respondents, recruitment to the post of permanent Security Guards could have been done only as per the guidelines for recruitment of bank guards a copy of which is marked as Ext.M5. As per this the Zila Sainik Board/Rajya Sainik Board are to be approached for names of persons from Ex-Servicemen to be recruited for the posts. The eligibility criteria also is prescribed in the guidelines. According to the Respondents, by the time the name of the petitioner was sponsored by the Sainik Board he had crossed the upper age limit prescribed for the post and so his name could not be shortlisted. However, Ext.M5—the guidelines on which the Respondent is relying

was framed only in 2013. MW1 has stated during his cross-examination that recruitment was taking place from the year 2008. But guidelines for recruitment of guards prior to 2013 is not produced.

13. What is seen from the admission of MW1 during his cross-examination is that the name of temporary guards who have completed 180 days of work used to be sent to the Regional Office for consideration of permanency. He further stated that the name of the petitioner has not been sent for consideration of permanency. However, according to the witness the petitioner has not given any application to send his name for permanency. The application should have been given to the Branch Manager. There is a letter from the Office of Ex-Servicemen Welfare marked as Ext.M4 which states that the petitioner have not registered his name with the Zila Sainik Board for employment and his name was not forwarded for re-employment during the period from 2008-2011 to the First Respondent. The petitioner has admitted during his cross-examination that he did not give any application for the post of guards in the year 2010. In 2012 also he did not submit any application to participate in the interview. He further admitted that he did not submit any application to the Welfare Board for employment in the Bank. Thus, it could be seen that the petitioner had not taken any specific steps to see that his name is sent to be considered for regularization. It seems that by the time he got his name sponsored by the Office of the Ex-Servicemen he had passed the age of 45 years which was the age limit prescribed for the post. So he was not considered for the post. Recruitment was conducted for the vacancies and the vacant posts were filled. It is on account of this the petitioner was not able to continue to work with the Second Respondent. The demand of the petitioner for reinstatement or regularization is without justification.

14. As already stated the petitioner has been working with the Second Respondent for several years continuously and he seems to have worked for more than 240 days in many of these years. There is no case for the respondents that the petitioner was terminated in compliance with Section-25F of the Act. So the Respondents are bound to pay compensation. Considering the period of service of the petitioner, the amount of compensation is fixed as Rs. 3,00,000/-.

15. Accordingly the Respondents are directed to pay the petitioner an amount of Rs. 3,00,000/- as compensation within a month of the publication of the award. In case of default in payment within the prescribed period, the amount will carry interest @ 7.5% per annum from the date of the award.

The reference is answered accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/ : WW1, Sri R. Kesavan
Petitioner

For the 2nd Party/ : MW1, Sri S. Gnanasambandham
Management

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ext.W1	22.07.1983	Transfer Certificate of the petitioner
Ext.W2	19.10.2001	Security Training Certificate
Ext.W3	03.08.2002	Community Certificate of the Petitioner
Ext.W4	25.01.2007	Certificate of Temporary Service issued by the 2nd Respondent
Ext.W5	-	Extract of the Attendance Note Book
Ext.W6	-	Extract of the Bank Account of the Petitioner

On the Management's side

Ex.No.	Date	Description
Ext.M1	13.06.2012	Details regarding personal particulars of 166 Ex-Servicemen candidates
Ext.M2	05.07.2012	Internal communication regarding constitution of screening committee
Ext.M3	16.07.2012	Internal communication regarding short listing of Ex-Servicemen candidates
Ext.M4	13.06.2015	Letter from Deputy Director, Office of the Ex-Servicemen's Welfare, Vellore
Ext.M5	30.10.2013	Guidelines for recruitment of bank guards

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2268.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एसेसियेटिड स्टोन इण्डस्ट्रीज (कोटा) लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 5/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.12.2015 को प्राप्त हुआ था।

[सं. एल-29011/9/2011-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 7th December, 2015

S.O. 2268.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2012) of the Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Associated Stone Industries (Kota) Ltd. and their workman, which was received by the Central Government on 3-12-2015.

[No. L-29011/9/2011-IR(M)]

NAVEEN KAPOOR, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्रीमती अनिता शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ. न्या. (केन्द्रीय)–5/2012

दिनांक स्थापित : 17/4/12

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क. एल-29011/9/2011-आईआर(एम) दिनांक 23/2/2012

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) व उपधारा (2ए) औद्योगिक विवाद अधिनियम, 1947

मध्य

राधेश्याम द्वारा सेकेट्री, राष्ट्रीय मजदूर संघ (इंटक),
रामगंजमण्डी, कोटा

—प्रार्थी श्रमिक

एवं

प्रसीडेन्ट, एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि.,
रामगंजमण्डी, कोटा

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री सी. एस. वर्मा

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री वी. के. जैन

अधिनियम दिनांक : 9/1/2015

अधिनियम

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 23/2/2012 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जायेगा) की धारा 10(1)घ) व उपधारा (2ए) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है—

“Whether the action of the management of M/s Associated Stone Industries (Kota) Limited, Kota in not regularising the services of Shri Radhey Shyam is legal and justified? What relief the workman is entitled to and from which date?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी द्वारा अपना क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया गया है कि प्रार्थी श्रमिक, नियोजक पक्ष के औद्योगिक संस्थान में बतौर खान मजदूर बेलदार दिनांक 9/12/94 से तत्कालीन मजदूरी वेतनमान 350-750 में नियुक्त हुआ था व बिना किसी शिकायत के खान लक्ष्मीपुरा व अन्य विभागों में कार्य करता चला आ रहा है। प्रार्थी श्रमिक को दि. 9/12/95 के बाद अर्थात दि. 1/1/96 से अन्य श्रमिकों की भौति नियोजक पक्ष द्वारा स्थायी किया जाकर समस्त वेतन—भत्ते ड्यू-ड्रॉन के हिसाब से प्रदान नहीं किये गये। प्रार्थी श्रमिक निरन्तर रूप से कार्य करता रहा परन्तु प्रार्थी से कनिष्ठ श्रमिकों को नियोजक पक्ष ने स्वयं की इच्छा से पदौन्नति देकर मुंशी बनाया किन्तु प्रार्थी श्रमिक को मुंशी नहीं बनाया, ना ही मुंशी का वेतनमान दिया जिससे प्रार्थी को 5354/-रु. प्रतिमाह का नुकसान हुआ जो देय के मुकाबले 5124/-रु. प्रतिमाह कम था। प्रार्थी श्रमिक द्वारा जरिये श्रमिक संघ कार्यवाही नहीं करने के लिए निवेदन किया गया व श्रमिक संघ की ओर से दिनांक 11/6/09 को मांग—पत्र नियोजक पक्ष को पेश किया, कोई कार्यवाही नहीं करने पर दिनांक 10/9/10 को समझौता अधिकारी (केन्द्रीय), कोटा के समक्ष विवाद प्रस्तुत किया गया। उक्त क्लेम स्टेटमेन्ट के माध्यम से प्रार्थी श्रमिक ने स्वयं का क्लेम स्टेटमेन्ट स्वीकार किया जाकर प्रार्थी श्रमिक को दिनांक 9/12/94 से बतौर बेलदार नियमित मानते हुए, दि. 1/1/96 से स्थायी श्रमिक व 1/6/2009 को बतौर मुंशी मानते हुए समस्त वेतन—भत्ते, लाभ एवं बिलो ग्राउण्ड की मजदूरी दि. 1/10/94 से 30/9/2006 तक का अन्तर 57,356/-रु. एवं दि. 1/6/2009 से 5124/-रु. प्रतिमाह निर्णय की दिनांक तक के 2,00,000/-रु. मानसिक संताप व डेमेजेज के बतौर मुआवजा मय ब्याज के अप्रार्थी नियोजक से दिलाये जाने की प्रार्थना की है।

4. यह प्रकरण क्लेम स्टेटमेन्ट का जवाब प्रस्तुत किये जाने हेतु नियत था कि आज दिनांक 9/1/15 को प्रार्थी श्रमिक ने एक प्रार्थना—पत्र प्रस्तुत कर व्यक्त किया कि प्रार्थी व अप्रार्थी के मध्य राजीनामा होने से प्रतिपक्षी, प्रार्थी को बेलदार (डेली वेजेज) से बेलदार के पद पर दिनांक 1/1/15 से स्थायी करेगा तथा स्थायी कामगार के अनुरूप सभी देय लाभ श्रमिक को देगा। प्रार्थी श्रमिक, प्रतिपक्षी से 10,000/-रु. की राशि क्षतिपूर्ति के और प्राप्त करेगा जिसका भुगतान प्रतिपक्षी, प्रार्थी को आज ही जरिये चैक सं. 005602 दि. 2/1/15 एचडीएफसी बैंक से कर रहा है। प्रार्थी एवं प्रतिपक्षी के मध्य अन्य कोई विवाद शेष नहीं रहेगा। उक्त प्रार्थना—पत्र के माध्यम से रेफ्रेन्स से सम्बन्धित विवाद इस समझौते से तय हुआ माने जाने व उक्त अनुसार ही प्रकरण का निस्तारण किये जाने की प्रार्थना न्यायालय से की गयी है। प्रार्थी श्रमिक को उसके अधिवक्ता/प्रतिनिधि श्री सी.एस.वर्मा द्वारा शनात्त किया गया है।

5. इस प्रकार प्रकरण में प्रार्थी व अप्रार्थी के मध्य समझौता होने से व प्रार्थी द्वारा एक प्रार्थना-पत्र प्रस्तुत कर हस्तगत रेफ्रेन्स से सम्बन्धित विवाद का निस्तारण समझौते के अनुसार ही किये जाने से यह मामला विवाद रहित हो जाता है व न्यायाधिकरण को सम्मेषित रेफ्रेन्स/विवाद इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दि.23/2/2012 के जरिये सम्मेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक राधेश्याम व अप्रार्थी नियोजक के मध्य राजीनामा/समझौता होने व प्रार्थी द्वारा प्रार्थना-पत्र प्रस्तुत कर प्रार्थी व अप्रार्थी के मध्य कोई विवाद शेष नहीं रहना प्रकट करने से मामला विवाद रहित हो जाता है।

श्रीमती अनिता शर्मा, न्यायाधीश

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2269.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 2/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.12.2015 को प्राप्त हुआ था।

[सं. एल-29012/1/2010-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 7th December, 2015

S.O. 2269.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2010) of the Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Associated Stone Industries (Kota) Ltd. and their workman, which was received by the Central Government on 3-12-2015.

[No. L-29012/1/2010-IR(M)]

NAVEEN KAPOOR, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्रीमती अनिता शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ. न्या. (केन्द्रीय)-2/2010

दिनांक स्थापित : 17/5/10

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्र.एल-29012/1/2010-आईआर(एम) दिनांक 22/4/2010

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

राजेश कुमार पुत्र चुनीलाल द्वारा जनरल सेक्रेट्री, हिन्द मजदूर सभा, बंगली कोलोनी, छावनी, कोटा

—प्रार्थी श्रमिक

एवं

प्रबन्धक, एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि., रामगंजमण्डी, कोटा

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री एन. के. तिवारी

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री वी. के. जैन

अधिनिर्णय दिनांक : 2/12/2014

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 22/4/2010 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जायेगा) की धारा 10(1)(घ) व उपधारा (2ए) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्मेषित किया गया है—

“Whether the action of the management of Associated Stone Industries Ltd., Ramganjmandi, Distt. Kota in terminating the services of Shri Rajesh Kumar S/o Shri Chunnilal. Ex-Munshi w.e.f. 14/3/2009 is legal and just? To what relief the applicant Shri Rajesh Kumar S/o Shri Chunnilal is entitled and from which date?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से न्यायाधिकरण के समक्ष क्लेम स्टेटमेंट प्रस्तुत कर यह व्यक्त किया गया है कि प्रार्थी श्रमिक को अप्रार्थी एसोसियेटेड स्टोन इण्डस्ट्रीज लि. रामगंजमण्डी जिला कोटा के प्रबन्धकवर्ग ने दिनांक 13/10/93 से बेलदार/मुंशी का कार्य करने हेतु सेवा में नियोजित किया था। प्रार्थी की माता धापू भी नियोजक के यहाँ कार्यरत थी परन्तु उन्हें सेवानिवृत्ति की आयु के पूर्व ही सेवानिवृत्त कर दिया गया था जिसका विवाद प्रस्तुत किया गया था। विवाद प्रस्तुत करने के बाद नियोजक ने प्रार्थी को परेशान करना शुरू कर दिया। अप्रार्थी नियोजक ने इसी कारण से प्रार्थी श्रमिक को भी नौकरी से निकालने की धमकी दी, मजबूर होकर प्रार्थी को अपनी माताजी के विवाद में समझौता करना पड़ा परन्तु नियोजक ने प्रार्थी श्रमिक को परेशान करना जारी रखा व प्रार्थी को सेवा में अनुपस्थित रहने सम्बन्धी आरोप-पत्र दिया व अप्रार्थी, प्रार्थी की माताजी के विवाद के फलस्वरूप रंजीश रखने लगा, जबकि प्रार्थी सेवा से अनुपस्थित नहीं रहा है। प्रार्थी को दिनांक 2/2/09 का अप्रार्थी

नियोजक का एक पत्र प्राप्त हुआ जिसमें दि. 31/10/08 से अपनी डयूटी से बिना पूर्व सूचना व बिना अवकाश स्वीकृत कराये अनुपस्थित रहना बताया जिसका स्पष्टीकरण प्रार्थी श्रमिक द्वारा प्रस्तुत किया गया जिसकी रसीद भी प्रार्थी श्रमिक को नहीं दी गयी। नियोजक ने प्रार्थी श्रमिक पर आरोपित आरोपों की कोई जाँच नहीं की व उसे जाँच आदि में भाग नहीं लेने दिया गया तथा अप्रार्थी नियोजक ने रजिस्टर्ड पत्र दि. 14/3/09 का प्रार्थी श्रमिक को भेजकर सेवा मुक्ति का आदेश दे दिया। इस प्रकार प्रार्थी श्रमिक को नौकरी से हटाने के पूर्व किसी प्रकार की कोई जाँच नहीं की गयी, प्रार्थी श्रमिक को अपना पक्ष रखने का कोई अवसर प्रदान नहीं किया गया व नैसर्गिक न्याय सिद्धांतों की अवहेलना कर उसे नौकरी से हटाया गया है। परिणामतः प्रार्थी श्रमिक अपने क्लेम स्टेटमेन्ट के माध्यम से उसे अप्रार्थी नियोजक के यहाँ पिछले सम्पूर्ण वेतन व समस्त परिलाभों सहित पुनः सेवा में बहाल किये जाने की प्रार्थना की है।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थी नियोजक की ओर से प्रार्थी श्रमिक को दिनांक 13/10/93 से उनके यहाँ बेलदार के पद पर नियोजित किया जाना स्वीकार किया गया है परन्तु दिनांक 31/10/08 से प्रार्थी श्रमिक द्वारा बिना सूचना दिये व बिना अवकाश स्वीकृत कराये अनाधिकृत रूप से अपनी डयूटी से अनुपस्थित होना व्यक्त किया है। इस बाबत प्रार्थी श्रमिक को अप्रार्थी नियोजक द्वारा अपने पत्र दिनांक 7/11/08 के द्वारा पत्र प्राप्ति के 72 घन्टे में प्रार्थी श्रमिक को अपना स्पष्टीकरण प्रस्तुत करने के निर्देश दिये गये थे, परन्तु प्रार्थी श्रमिक द्वारा उस पत्र का कोई स्पष्टीकरण नहीं दिया गया। अप्रार्थी नियोजक ने घरेलू जाँच किये जाने व जाँच अधिकारी नियुक्त किये जाने के सम्बन्ध में दि. 21/2/09 का सूचना पत्र प्रार्थी श्रमिक को प्रेषित करना व्यक्त किया परन्तु प्रार्थी तदुपरान्त भी जाँच कार्यवाही में उपस्थित नहीं हुआ। तदुपरान्त जाँच अधिकारी द्वारा नैसर्गिक न्याय सिद्धांतों की पालना में प्रार्थी श्रमिक को अपना पक्ष रखने हेतु जाँच 9/3/09 के लिए नियत की गयी। प्रार्थी श्रमिक के नियत तिथि को जाँच में उपस्थित होने व आरोप-पत्र में वर्णित आरोपों को स्वीकार कर लिये जाने पर जाँच कार्यवाही बन्द की गयी व अप्रार्थी नियोजक ने दिनांक 14/3/09 के सेवामुक्ति आदेश से प्रार्थी श्रमिक को सेवा से पृथक किये जाने का दण्ड पारित किया। इस प्रकार जाँच अधिकारी द्वारा नैसर्गिक न्याय सिद्धांतों की पालना में जाँच किया जाना व्यक्त करते हुए प्रार्थी श्रमिक की ओर से प्रस्तुत किया गया क्लेम स्टेटमेन्ट खारिज किये जाने की प्रार्थना की गयी।

5. यह प्रकरण जाँच कार्यवाही सम्बन्धी कागजात पेश किये जाने हेतु दिनांक 30/1/15 के लिए नियत था, परन्तु उससे पूर्व ही आज दिनांक 2/12/14 को दोनों पक्षों ने न्यायाधिकरण में उपस्थित होकर “लोक अदालत” की भावना से प्रेरित होकर एक राजीनामा प्रस्तुत किया जिसकी सुसंगत इबारत निमानुसार है:-

‘प्रार्थी प्रतिपक्षी से 30,000/-रु. (तीस हजार रुपये) अपनी सेवा मुक्ति विवाद को समाप्त करने की एवज में प्राप्त करेगा, जोकि फुल एण्ड फाईनल पेमेन्ट होगा। उपरोक्त राशि प्रतिपक्षी, प्रार्थी को एक माह के अन्दर अदा करेगा, तदुपरान्त प्रार्थी व प्रतिपक्षी के मध्य कोई विवाद शेष नहीं रहेगा। ग्रेचुटी व पीएफ की राशि नियमानुसार प्रार्थी श्रमिक प्राप्त करेगा।’

6. उपरोक्त राजीनामे के अनुसार लम्बित प्रकरण में पक्षकारान आगामी कोई कार्यवाही नहीं चाहते हैं तथा उनके द्वारा प्रस्तुतशुदा राजीनामे के अनुसार प्रकरण अन्तिम रूप से निस्तारित किये जाने की प्रार्थना की गयी।

7. उपरोक्त राजीनामे की इबारत दोनों पक्षों को पढ़कर सुनायी, समझायी गयी तो उन्होंने स्वेच्छा से राजीनामा करना व राजीनामा के तथ्यों को सही होना स्वीकार किया। तदुपरान्त प्रस्तुतशुदा राजीनामा तस्दीक किया गया। इस प्रकार दोनों पक्षों के मध्य राजीनामा होने व प्रार्थी पक्ष द्वारा प्रकरण में कोई कार्यवाही नहीं चाहने से प्रकरण में अब कोई कार्यवाही शेष नहीं रहने से प्रकरण विवाद रहित हो जाता है एवं इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 22/4/2010 के जरिये सम्प्रेरित निर्देश/विवाद को अधिनिर्णित कर इसी अनुरूप उत्तरित किया जाता है कि इस प्रकरण में पक्षकारों के मध्य “लोक अदालत” की भावना से प्रेरित होकर राजीनामा हो जाने से मामला विवाद रहित हो जाता है।

श्रीमती अनिता शर्मा, न्यायाधीश

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2270.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एसोसियेटिड स्टेन इण्डस्ट्रीज (कोटा) लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 2/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.12.2015 को प्राप्त हुआ था।

[सं. एल-29012/42/2004-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 7th December, 2015

S.O. 2270.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2014) of the Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Associated Stone Co. (Kota) Ltd. and their workman, which was received by the Central Government on 3-12-2015.

[No. L-29012/42/2004-IR(M)]

NAVEEN KAPOOR, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्रीमती अनिता शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ. न्या. (केन्द्रीय)-2/2014

दिनांक स्थापित : 19/8/14

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्र. एल-29012/42/2004—आईआर(एम) दिनांक 21/4/2014

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

जसवन्त सिंह पुत्र गिरधारी सिंह द्वारा सेक्रेट्री, राष्ट्रीय मजदूर संघ (इन्टक), मै. एसोसियेटेड स्टोन कंपनी (कोटा) लिमिटेड,

रामगंजमण्डी

एवं

प्रबन्धक, मै. एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि., रामगंजमण्डी, जिला कोटा (राज.)

—प्रार्थी श्रमिक

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री सतीश पचौरी

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री वी. के. जैन

अधिनिर्णय दिनांक : 25/2/2015

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 21/4/2014 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जावेगा) की धारा 10(1)(घ) व उपधारा (२) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है—

“Whether the action of the management of M/s Associated Stone Co.(Kota) Ltd., Lime Stone Mines, Ramganjmandi in superannuationg Sh. Jaswant Singh from service w.e.f. 26/11/2002 ignoring his age, is legal and justified? What relief the workman is entitled to?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर दि. 19/8/14 को उक्त निर्देश/रेफेन्स दर्ज रजिस्टर किये जाने के आदेश पारित किये गये तथा प्रार्थी श्रमिक व अप्रार्थी नियोजक को नोटिस जारी कर पत्रावली में व्हेम स्टेटमेंट पेश होने हेतु दिनांक 6/2/15 नियत की गयी।

3. दि. 6/2/15 को पुनः पक्षकारों को नोटिस जारी किये जाने के आदेश दिये जाकर पत्रावली में आगामी पेशी 5/6/15 नियत की गयी, परन्तु आज दिनांक 25/2/15 को प्रार्थी श्रमिक जसवन्त सिंह मय अधिकृत प्रतिनिधि तथा अप्रार्थी नियोजक प्रबन्धक की ओर से आर.एस. शर्मा मय अधिकृत प्रतिनिधि के उपस्थित होकर संयुक्त रूप से प्रार्थना—पत्र प्रस्तुत कर व्यक्त किया गया कि प्रार्थी ने प्रतिपक्षी से अपनी सेवानिवृत्ति के सम्बन्ध में किये गये

विवाद में प्रतिपक्षी से समझौता कर लिया है तथा समझौते के तहत प्रार्थी ने प्रतिपक्षी से चैक नं. 005603 दि.2/1/2015 एचडीएफसी बैंक का 40,000/-रु. का क्षतिपूर्ति के एवज में प्राप्त कर लिया है। प्रार्थी, प्रतिपक्षी के यहाँ अपने पुनः नियोजन के अधिकार का परित्याग कर रहा है। प्रार्थी एवं प्रतिपक्षी के मध्य अब कोई विवाद शेष नहीं रहा है। अतः प्रार्थी ने स्वयं का विवाद निस्तारण किये जाने की प्रार्थना न्यायाधिकरण से की है।

4. इस प्रकार प्रकरण में प्रार्थी श्रमिक की ओर से सम्प्रेषित उक्त निर्देश/रेफेन्स के सम्बन्ध में कोई व्हेम स्टेटमेंट भी प्रस्तुत नहीं किया गया है तथा प्रार्थना—पत्र के माध्यम से प्रार्थी श्रमिक ने अप्रार्थी/प्रतिपक्षी से क्षतिपूर्ति के रूप में 40,000/-रु. का चैक प्राप्त कर अपने पुनः नियोजन के अधिकार का परित्याग करना व्यक्त किया है व प्रार्थी तथा अप्रार्थी के मध्य अब कोई विवाद शेष नहीं होना व्यक्त किया है। इन परिस्थितियों में प्रार्थी व अप्रार्थी के मध्य कोई विवाद शेष नहीं होने से मामला विवाद रहित हो जाता है व सम्प्रेषित निर्देश/रेफेन्स भी इसी प्रकार उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 21/4/2014 के जरिये सम्प्रेषित निर्देश/रेफेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक जसवन्त सिंह द्वारा इस आशय का प्रार्थना—पत्र प्रस्तुत करने पर कि प्रार्थी व अप्रार्थी के मध्य अब कोई विवाद शेष नहीं है, यह मामला विवाद रहित हो जाता है।

श्रीमती अनिता शर्मा, न्यायाधीश

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2271.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स श्रीनाथ एन्टरप्राइजेज के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 21/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.12.2015 को प्राप्त हुआ था।

[सं. एल-29012/30/1998-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 7th December, 2015

S.O. 2271.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/1998) of the Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Sreenath Enterprises and their workman, which was received by the Central Government on 3-12-2015.

[No. L-29012/30/1998-IR(M)]

NAVEEN KAPOOR, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्रीमती अनिता शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ. न्या. (केन्द्रीय)–21/1998

दिनांक स्थापित : 30/9/98

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्र. एल-29012/38/98-आईआर(एम) दिनांक 8/9/98

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उप-धारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

1—पवन कुमार

2—पिंकी

3—पावती

क्रमशः मृतक प्रार्थी श्रमिक बालचन्द के पुत्र, पुत्री व पत्नी निवासी इकलिंगपुरा, रावतभाटा जिला चित्तौड़गढ़ द्वारा जनरल सेक्रेट्री, राष्ट्रीय मजदूर संघ, रामगंजमण्डी, कोटा एवं

—प्रार्थीगण

मै. श्रीनाथ एन्टरप्राइजेज, चेचट जिला कोट

—अप्रार्थी नियोजक

उपस्थित

प्रार्थीगण की ओर से प्रतिनिधि : श्री पुरुषोत्तम दाधीच
अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री संजय विजय, प्रबन्धक/प्रशासक

अधिनिर्णय दिनांक : 7/7/2015

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 8/9/98 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जायेगा) की धारा 10(1)घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्मेलित किया गया है:-

"Whether the action of the management of M/s Sreenath Enterprises, Chechat Limestone Mines, Chechat in not allowing Shri Balchand S/o Shri Bhagirath Kumhar, Driver to work from 6/1/1998 is legal and justified? If not, to what relief the workman is entitled to and from what date?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्व उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक बालचन्द की ओर से प्रार्थी श्रमिक यूनियन के महामंडी द्वारा क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया गया है कि प्रार्थी श्रमिक अप्रार्थी नियोजक के यहाँ दि. 28/5/93 से बतौर ड्राईवर, चेचट खान पर कार्यरत था, परन्तु प्रार्थी को दि. 6/1/98 से अवैध रूप से कार्य नहीं करने दिया गया। प्रार्थी श्रमिक दि. 28/5/93 से बतौर ड्राईवर अप्रार्थी नियोजक के यहाँ कार्य करते हुए न्यूनतम वेतन दि. 6/1/98 से पूर्व प्राप्त कर रहा था तथा प्रार्थी श्रमिक का पी.एफ. काटकर पी.एफ. विभाग में जमा करवाया जाता था। प्रार्थी श्रमिक निरन्तर 240 दिन का कार्य करने के उपरान्त अप्रार्थी के नियोजन में कार्यरत था, परन्तु अप्रार्थी नियोजक द्वारा अवैध रूप से प्रार्थी श्रमिक को सेवा से पथृक कर दिया गया। परिणामतः प्रार्थी श्रमिक की ओर से क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर अप्रार्थी पक्ष द्वारा की गयी कार्यवाही निरस्त की जाकर प्रार्थी श्रमिक को दि. 6/1/98 से निरन्तर सेवा में मानते हुए समस्त बकाया वेतन लाभ, डयू-ड्रॉन स्टेटमेन्ट के आधार पर दिलाये जाने की प्रार्थना की गयी है।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थी नियोजक की ओर से व्यक्त किया गया है कि प्रार्थी को कभी भी सेवामुक्त नहीं किया गया है बल्कि दि. 31/12/97 तक कार्य कर प्रार्थी श्रमिक स्वेच्छा से नौकरी से त्यागपत्र देकर चला गया व तत्पश्चात वह कभी कार्य पर उपस्थित नहीं हुआ। अप्रार्थी ने प्रार्थी को नौकरी से नहीं निकाला, अतः उसे नोटिस आदि दिये जाने की आवश्यकता नहीं थी। इस प्रकार जब प्रार्थी को अप्रार्थी द्वारा सेवामुक्त ही नहीं किया गया तो कानूनों की पालना किये जाने का कोई प्रश्न ही पैदा नहीं होता। परिणामतः अप्रार्थी नियोजक की ओर से प्रार्थी के क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर प्रार्थी का क्लेम स्टेटमेन्ट खारिज किये जाने की प्रार्थना न्यायाधिकरण से की गयी है।

5. साक्ष्य में प्रार्थी श्रमिक की ओर से स्वयं प्रार्थी बालचन्द का तथा साक्षी रामगोपाल गुप्ता का शपथ-पत्र प्रस्तुत किया गया है जिनसे अप्रार्थी प्रतिनिधि द्वारा जिरह की गयी है। प्रलेखीय साक्ष्य में प्रार्थी पक्ष की ओर से प्रदर्श 1 लगायत 4 प्रस्तुत कर प्रदर्शित करवाये गये हैं, जबकि अप्रार्थी पक्ष की ओर से प्रदर्श 1 लगायत 4 प्रस्तुत कर प्रदर्शित करवाया गया है।

6. प्रकरण में दि. 12/4/11 को प्रार्थी श्रमिक बालचन्द की मृत्यु होने के उपरान्त दि. 29/8/11 को प्रार्थी श्रमिक के वारिसान द्वारा प्रार्थना-पत्र प्रस्तुत कर उन्हें अभिलेख पर कायममुकामान/प्रार्थीगण के रूप में अभिलेख पर लिये जाने की प्रार्थना की गयी जिस पर उक्त प्रार्थना-पत्र दि. 13/8/12 को स्वीकार किया जाकर मृतक प्रार्थी श्रमिक की पत्नी पावती, पुत्र पवन व पुत्री पिंकी कायममुकामान/प्रार्थीगण के रूप में अभिलेख पर लिये जाने के आदेश दिये जाकर संरित किये गये।

7. यह प्रकरण दि. 4/8/15 को साक्ष्य अप्रार्थी हेतु नियत था कि आज दि. 7/7/15 को उभयपक्ष की ओर से संयुक्त प्रार्थना-पत्र के साथ एक समझौता निर्धारित प्रपत्र-एच में इस आशय का प्रस्तुत किया गया कि प्रार्थी

श्रमिक बालचन्द का देहान्त हो गया है तथा प्रार्थी के कायममुकान/प्रार्थीगण लम्बित विवाद को समझौता कर निपटाना चाहते हैं। दोनों पक्षों ने वार्ता कर निश्चय किया है कि नियोजक एकमुश्त राशि 40,000/-रु. का भुगतान करने को तैयार है व 40,000/-रु. की राशि का चैक आज ही समझौता सम्पन्न होते ही प्रार्थीगण को अदा कर देगा। प्रार्थीगण (मृतक श्रमिक के वारिसान) का उक्त विवाद के सम्बन्ध में नियोजक से अब किसी प्रकार की राशि लेना शेष नहीं रह गया है तथा वे औद्योगिक व्यायाधिकरण (केन्द्रीय), कोटा के समक्ष विवाद को समाप्त कर लेंगे। अतः पत्रावली आज तलब कर पेशी में ली गयी।

8. प्रस्तुतशुदा उक्त राजीनामा/समझौता-पत्र दोनों पक्षों को पढ़कर सुनाया व समझाया गया तो दोनों पक्षों ने स्वेच्छा से राजीनामा करना व राजीनामे के तथ्यों को स्वीकार किया। राजीनामा तस्वीक किया गया।

9. इस प्रकार दोनों पक्षों के मध्य राजीनामा हो जाने के उपरान्त मृतक श्रमिक बालचन्द के विधिक प्रतिनिधिगण/प्रार्थीगण द्वारा प्रकरण में अब किसी प्रकार की कोई राशि लेना शेष नहीं रहने व न्यायाधिकरण के समक्ष विवाद समाप्त करने की मंशा प्रकट करने से अब इस मामले में कोई कार्यवाही शेष नहीं रही है व उपरोक्तानुसार ही सम्प्रेषित निर्देश/रेफ्रेन्स उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासादिक आदेश दिनांक 8/9/98 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत प्रकरण में दोनों पक्षों के मध्य राजीनामा हो जाने के फलस्वरूप प्रार्थीगण द्वारा अप्रार्थी नियोजक से किसी प्रकार की कोई राशि लेना शेष नहीं रहने व विवाद समाप्त करने की मंशा प्रकट करने से मामले में अब कोई कार्यवाही शेष नहीं रही है।

श्रीमती अनिता शर्मा, न्यायाधीश

नई दिल्ली, 7 दिसम्बर, 2015

का.आ. 2272.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एसोसियेटिड स्टोन इण्डस्ट्रीज (कोटा) लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 3/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3. 12.2015 को प्राप्त हुआ था।

[सं. एल-29012/20/2000-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 7th December, 2015

S.O. 2272.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2010) of the Industrial Tribunal/Labour Court, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Associated Stone Industries (Kota) Ltd. and their

workman, which was received by the Central Government on 3-12-2015.

[No. L-29012/20/2000-IR(M)]

NAVEEN KAPOOR, Under Secy.

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्रीमती अनिता शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ. न्या. (केन्द्रीय)-3/2010

दिनांक स्थापित : 1/10/2010

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रं.एल-29012/20/2000-आईआर(एम) दिनांक 9/9/2010

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उप-धारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

छीतरमल पुत्र सांवलिया बैरवा द्वारा जनरल सेक्रेट्री, हाड़ौती एवं पत्थर उद्योग मजदूर यूनियन, रामगंजमण्डी जिला कोटा(राज.)

—प्रार्थी श्रमिक

एवं

प्रबन्धक, मै. एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि., रामगंजमण्डी, जिला कोटा (राज.)

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री एन. के. तिवारी

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री वी. के. जैन

अधिनिर्णय दिनांक : 25/8/2015

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासादिक आदेश दिनांक 9/9/2010 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है—

“Whether Shri Chhitar Mal S/o Shri Sanvaliya Berwa is legal and justified in raising the dispute of continuity of service and back wages against the management of M/s Associated Stone Industries (Kota) Ltd, Ramganjmandi or not? If yes, what relief the claimant is entitled to and from which date?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्व उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी ने अपना क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया है कि प्रार्थी को अप्रार्थी प्रबन्धक, मै. एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि., रामगंजमण्डी जिला कोटा (जिसे आगे चलकर "नियोजक" शब्द से सम्बोधित किया जावेगा) ने दिनांक 13/8/77 से कटर के पद पर सेवा में नियोजित किया था। अप्रार्थी नियोजक ने प्रार्थी को दि. 16/10/89 को एक आरोप-पत्र इस आशय का दिया कि दि. 14/10/89 को प्रार्थी ने अपने साथी हजारी के साथ जाकर सुपरवाईजर कहैया बलदेव को गालियां दी एवं वह सारे मजदूरों को बोनस देने व मारपीट करने को तैयार हुआ। प्रार्थी ने इसका उत्तर दिनांक 18/10/89 को प्रस्तुत किया, परन्तु नियोजक ने आरोप की जाँच करने हेतु आर.एस.शर्मा, महाप्रबन्धक (कार्मिक) को जाँच अधिकारी नियुक्त कर दिया जिन्होंने जाँच में प्रार्थी को अपना पक्ष प्रस्तुत करने एवं बचाव करने का कोई अवसर प्रदान नहीं किया तथा मनमाने तरीके से जाँच की जो न्याय के नैसर्गिक सिद्धांतों की विपरीत है। नियोजक ने जाँच अधिकारी द्वारा की गयी अवैध जाँच के आधार पर दि. 27/12/89 को सेवा से हटाये जाने का दण्ड देकर प्रार्थी को सेवा से पृथक कर दिया। प्रार्थी को जाँच में अपना प्रतिनिधि नहीं लाने दिया, जाँच अधिकारी ने जाँच कार्यवाही के खाली कागजात पर नाजायाज रूप से हस्ताक्षर करने का दबाव प्रार्थी पर डाला। प्रार्थी के जाँच कार्यवाही में जाने पर भी प्रार्थी की उपस्थिति दर्ज नहीं की गयी व दुर्भावनावश जाँच कर प्रार्थी को सेवा से हटाने का दण्ड दिया गया। सेवा से हटाने से पूर्व प्रार्थी को किसी प्रकार का कारण बताओ नोटिस नहीं दिया गया। इस प्रकार प्रार्थी को सेवा से पृथक किये जाने का दण्ड अनुचित एवं अवैध है। प्रार्थी की ओर से दि. 20/3/90 को महामंत्री, राष्ट्रीय खान मजदूर यूनियन, रामगंजमण्डी जिला कोटा ने नियोजक के विरुद्ध सहायक श्रम आयुक्त (केन्द्रीय), कोटा के समक्ष एक विवाद प्रस्तुत किया जिसके सम्बन्ध में असफल वार्ता प्रतिवेदन, श्रम मंत्रालय, भारत सरकार को प्रेषित किया गया, परन्तु श्रम मंत्रालय, भारत सरकार ने दिनांक 9/10.9.91 के पत्र द्वारा प्रार्थी के विवाद को प्रत्यक्षतः कोई आधार नहीं मानते हुए न्यायिन्यार्थ सम्प्रेषित करने से मना कर दिया। विवाद को निर्णयार्थ नहीं भेजने के विरुद्ध प्रार्थी ने माननीय राज. उच्च न्यायालय में याचिका प्रस्तुत की जिस पर माननीय राज. उच्च न्यायालय की जयपुर पीठ द्वारा पारित आदेश दि. 12/9/94 की पालनार्थ प्रार्थी ने दि. 19/1/95 को ड्यूटी पर उपस्थित होने की रिपोर्ट प्रस्तुत की, परन्तु दि. 19/1/95 को प्रार्थी को ड्यूटी पर नहीं लेकर नियोजक ने दि. 25/1/95 को रजि.एडी. डाक द्वारा पत्र प्रेषित कर 7 दिन के भीतर सातलखेड़ी खान पर ड्यूटी पर उपस्थित होने के निर्देश दिये। इस प्रकार नियोजक के यहाँ प्रार्थी ड्यूटी पर उपस्थित हो गया, परन्तु नियोजक ने प्रार्थी की नियुक्ति दि. 13/8/77 से नहीं मानकर नई सेवाओं पर नियुक्ति मानी। इस प्रकार प्रार्थी की 18 साल की सेवायें समाप्त कर उसे नौकरी पर लिया जो अवैध है। प्रार्थी ने भारत सरकार, श्रम मंत्रालय, नई दिल्ली के अण्डर सेक्रेट्री को उक्त सम्बन्ध में एक प्रार्थना-पत्र प्रेषित किया, परन्तु उनके द्वारा उसका कोई उत्तर नहीं दिया गया, अतः प्रार्थी ने दि. 10/3/95 को सहायक श्रम आयुक्त (केन्द्रीय), कोटा के समक्ष पुनः विवाद प्रस्तुत किया। जब प्रार्थी ने सेवा पर रखने की मांग की तो नियोजक ने प्रार्थी को सेवा में लेने से

मना कर दिया, उसके बाद से प्रार्थी श्रमिक सेवा से बाहर चल रहा है। उपरोक्त विवाद का जवाब नियोजक द्वारा इस आशय का प्रस्तुत किया गया कि प्रार्थी का कोई विवाद नहीं बनता है। सहायक श्रम आयुक्त (केन्द्रीय), कोटा ने दि. 3/3/2000 को असफल वार्ता प्रतिवेदन भारत सरकार को प्रेषित किया परन्तु भारत सरकार, श्रम मंत्रालय ने प्रार्थी का विवाद न्याय निर्णयार्थ सम्प्रेषित करने से मना कर दिया। अतः प्रार्थी ने पुनः माननीय राज. उच्च न्यायालय में याचिका प्रस्तुत की जिस पर प्रार्थी का विवाद निर्णयार्थ सम्प्रेषित करने के आदेश पारित हुए। परिणामतः प्रार्थी ने अपना क्लेम स्टेटमेन्ट प्रस्तुत कर प्रार्थी को नियोजक के यहाँ पर पिछले सम्पूर्ण वेतन व समस्त हितलाभों सहित सेवा में बहाल किये जाने की प्रार्थना न्यायाधिकरण से की है।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थी ने दि. 16/10/89 को प्रार्थी को आरोप-पत्र दिया जाना व आरोपों की जाँच हेतु जाँच अधिकारी आर.एस. शर्मा को नियुक्त किया जाना स्वीकार किया है तथा जाँच अधिकारी द्वारा विभागीय जाँच, न्याय के नैसर्गिक सिद्धांतों के अन्तर्गत की जाकर प्रार्थी को अप्रार्थी द्वारा दि. 27/12/89 के आदेश द्वारा उचित एवं वैध रूप से सेवा से पृथक किया जाना व्यक्त किया है। जाँच अधिकारी द्वारा प्रार्थी पर लगाये गये आरोपों को पूर्णतया प्रमाणित पाया गया। अप्रार्थी ने पत्र/आदेश दि. 27/12/89 के द्वारा आरोपों की गम्भीरता को दृष्टिगत रखते हुए प्रार्थी को अप्रार्थी कंपनी की सेवाओं से पृथक करने का दण्ड पारित किया। अप्रार्थी ने प्रार्थी द्वारा प्रस्तुत की गयी याचिका में माननीय राज. उच्च न्यायालय द्वारा दि. 12/9/94 को आदेश पारित करना स्वीकार किया है तथा प्रार्थी द्वारा दि. 19/1/95 को ड्यूटी पर उपस्थित होने हेतु पत्र प्रेषित करना भी स्वीकार किया है। अप्रार्थी ने प्रार्थी द्वारा दि. 8/2/95 को ड्यूटी पर उपस्थित होकर मात्र 2 घण्टे कार्य करने के उपरान्त बिना किसी सूचना के कार्य छोड़कर चला जाना व्यक्त किया है। प्रार्थी, माननीय राज. उच्च न्यायालय के आदेश दि. 12/9/94 को समझने में भूल कर रहा है। माननीय राज. उच्च न्यायालय ने अपने निर्णय/आदेश में यह वर्णित नहीं किया है कि प्रार्थी की सेवायें दि. 13/8/77 से लगातार मानी जायें। इस प्रकार अप्रार्थी ने प्रार्थी को पुनः सेवा में नियोजित किये जाने के उपरान्त प्रार्थी को दि. 8/2/95 को ड्यूटी पर उपस्थित होने के उपरान्त बिना सूचना के अनुपस्थित रहना कहा है। प्रार्थी लाभकारी नियोजन में है, उसने अपने क्लेम स्टेटमेन्ट में भी बेरोजगार होने का कोई उल्लेख नहीं किया है। परिणामतः अप्रार्थी की ओर से प्रार्थी द्वारा प्रस्तुत किया गया क्लेम स्टेटमेन्ट खारिज किये जाने की प्रार्थना न्यायाधिकरण से की गयी है।

5. प्रकरण में दिनांक 26/2/2016 की तिथि विभागीय जाँच की उचितता की बहस हेतु नियत की गयी थी, परन्तु प्रार्थी ने आज दिनांक 25/8/2015 को न्यायाधिकरण में उपस्थित होकर एक प्रार्थना-पत्र इस आशय का प्रस्तुत किया कि प्रार्थी व अप्रार्थी के मध्य आपसी समझौता हो गया है। समझौते के अनुसार प्रार्थी, अप्रार्थी के यहाँ अपने नियोजन के अधिकार का परिव्याप्त कर रहा है। अप्रार्थी, प्रार्थी को एक लाख रुपये की राशि बतौर क्षतिपूर्ति एक सप्ताह में अदा कर देगा। प्रार्थी इस विवाद को आगे नहीं चलाना चाहता है।

उक्त प्रार्थना-पत्र के माध्यम से इस विवाद का निस्तारण इसी प्रकार किये जाने की प्रार्थना न्यायाधिकरण से की गयी है। विद्वान प्रतिनिधि अप्रार्थी ने भी उक्त प्रार्थना-पत्र स्वीकार किये जाने में अनापत्ति व्यक्त की है।

6. अतः उक्त परिस्थितियों में प्रार्थी द्वारा आवेदन-पत्र प्रस्तुत कर प्रार्थी व अप्रार्थी के मध्य आपसी समझौता होने से प्रार्थी ने अपने नियोजन के अधिकार का परित्याग कर इस विवाद को आगे नहीं चलाने की मंशा प्रकट की है। अतः प्रार्थी व अप्रार्थी के मध्य अब कोई विवाद शेष नहीं रहने से मामला विवाद रहित हो जाता है व सम्भेषित निर्देश/रेफ्रेन्स भी इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासंगिक आदेश दिनांक 9/9/2010 के जरिये सम्भेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक छीतरमल द्वारा प्रस्तुत आवेदन-पत्र अनुसार प्रार्थी व अप्रार्थी के मध्य समझौता होने से प्रार्थी द्वारा अपने नियोजन के अधिकार का परित्याग करने व विवाद को आगे नहीं चलाने की मंशा प्रकट करने से अब यह मामला विवाद रहित हो जाता है।

श्रीमती अनिता शर्मा, न्यायाधीश

नई दिल्ली, 8 दिसम्बर, 2015

का.आ. 2273.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आई.सी.आई. सी.आई. प्रूडेंसियल लाईफ इंश्योरेन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 36/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.12.2015 को प्राप्त हुआ था।

[सं. एल-17012/18/2010-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th December, 2015

S.O. 2273.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2011) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ICICI Prudential Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 3-12-2015.

[No. L-17012/18/2010-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present : Shri Harbansh Kumar Saxena

ID.No. 36/11

Sh. Sunil Dutt,
S/o Sh. Hari Dutt,
C/o 12-D , MCD Flats,
Bungalow Road,
Delhi-7

...Workman

Versus

The Sr. Manager, HR,
M/s. ICICI Prudential Life
Insurance Co. Ltd.
3rd Floor, Videocon Tower ,
Jhandewalan,
New Delhi-110005

...Management

AWARD

The Central Government in the Ministry of Labour vide notification No. L-17012/18/2010 (IR(M) dated 25.04.2011 referred the following Industrial Dispute to this Tribunal for adjudication #:

“Whether Sunil Dutt, Manager Business Partner in the ICICI Prudential Life Insurance Company Ltd., is a Workman?

“If so, whether the action of the management of M/s ICICI Prudential Life Insurance Company Ltd., Bangalore in terminating the services of Sh. Sunil Duttw.e.f. 8/7/2009 is just, fair and legal? What relief the workman is entitled to and from which date?

On 02.05.2011 reference was received in this Tribunal. Which was registered as I.D. No. 36/2011. Claimant union was called upon to file claim statement with in fifteen days from date of service of notice which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 1.8.2011. Where-in he prayed as follows:—

It is therefore most respectfully prayed that this Hon’ble Court be pleased to :

- Direct the management to reinstate the workman with full back wages;
- Pass any other order(s) which this Hon’ble Court deem fit and proper.

Against claim statement management filed written statement on 13.02.2012 through which management prayed as follows#—

In view of the above facts and circumstances, it is therefore most humbly prayed that his Hon’ble Tribunal be pleased to dismiss the statement of claim of Mr. Sunil Dutt in favour of the Respondent Company and against Mr. Sunil Dutt in the interest of justice.

On 9.4.2013 My Ld. Predecessor framed following issues#-

1. Whether termination of services of the claimant amounts to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1947?
2. As in terms of reference.

And case was fixed for evidence of the parties.

When workman has not filed his evidence in spite of several opportunities then this Tribunal on 15.9.2014 closed the right of workman evidence and fixed 19.11.2014 for management evidence.

On 19.12.2014 management in support of its case filed affidavit of MW1 Mrs. Sarita Gusain who tendered her affidavit on 25.8.2015. Wherein stated as follows#-

I tender my affidavit in my evidence as Ex. MW1/A which bears my signature at point 'A' and 'B'. Contents of affidavit are based on official and personal knowledge through department. I rely upon documents which are Exh. MW1/1 to Exh. MW1/3.

Cross nil as none is turning upon behalf of workman

Management on 1.10.2015 filed written arguments. Wherein management prayed that this Hon'ble Court may kindly be pleased to dismiss the claim, in the interest of justice.

My issue wise findings as follows#-

Finding on issue no. 1.

Issue No.1 is as follows#-

"Whether termination of services of the claimant amounts to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1947?"

Burden to prove lies on workman but workman produce no evidence. Hence issue no. 1 is liable to be decided against workman and in favour of management. Which is accordingly decided.

As issue no. 1 as already been decided against workman. So, issue no. 2 is also liable to be decided against workman and in favour of management. Which is accordingly decided.

Reference is liable to be decided against workman and in favour of management. Which is accordingly decided.

Award is accordingly passed.

Dated: 29/10/2015

HARBANSHP KUMAR SAXENA, Presiding Officer

नई दिल्ली, 8 दिसम्बर, 2015

का.आ. 2274.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स न्यू इंडिया एश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 68/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.12.2015 को प्राप्त हुआ था।

[सं. एल-17011/04/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th December, 2015

S.O. 2274.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2013) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. New India Assurance Company Ltd. and their workman, which was received by the Central Government on 3-12-2015.

[No. L-17011/04/2013-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present : Shri Harbansh Kumar Saxena

ID No. 68/13

The General Secy.

General Insurance Employees Federation, NR,
C-30, Community Centre,
New Delhi -110028

...Workmen

Versus

1. Managing Director,
The New India Assurance Co. Ltd.,
87, MG Road. Mumbai.

2. Chief Regional Manager,
The New India Assurance Co. Ltd.,
6/7, Astley Hall, Dehradun ...Management

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-17011/4/2013-(IR(M) dated 23.05.2013 referred the following Industrial Dispute to this Tribunal for adjudication #.

"Whether the action of the management of New India Assurance Company Ltd., in not granting increment to Sh. Rajesh Kumar Sl. No. 33552 in the year 2011, 2012 and not granting of ACP to S/Shri Anil

Kumar Sharma 20927, Satish Kumar 21232, Amar Singh 16.558, Mahendra Kumar 16866, M.L. Verma 17364 and Man Singh Rawat 17092 is illegal and unjustified? If so, what relief is the workman are entitled to?"

On 1.7.13 was received in this Tribunal. Which was registered as ID. No. 68/13 and claimants were called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants filed claim statement on 12.8.2013. Wherein they prayed as follows#-

It is therefore, most humbly prayed that your honor Tribunal may graciously be pleased to answer the order of reference in favour of Union and to grant the following relief to workmen.

- A. That appropriate action against the earring official Sh. Rambabu, Manager, for unwarranted harassment to the workmen by willfull with holding their increments as well as Assured progression Career Scheme (APCS).
- B. That to release 18% per annum compound interest for delaying period to the workmen.
- C. That pass any such order or orders, which in the circumstances of the case, the Hon'ble court deems just and proper in favour of the workmen against the management.

Against claim statement management filed written statement on 22.10.2013 through which management prayed as follows#-

As none of our employees / officers ever been victimizing anyone and negligent in performing their duties. They have never been prejudiced towards any employee on account of his/her association . We have always tried to ensure that all the dues are released well in time.

Due to reasons mentioned in para no. 4 of the objection, there were some delay which was not deliberate or mala fide.

It is, therefore most humbly prayed that since the grievances of the said 7 employees including Mr. Rajesh Kumar have already been settled by OP No. 2 last year on 26.09.2012 and payments have already been made to them through bank transfer (copies attached 1 to 7) and there is no matter of dues and increment is pending with before us, so the petition of the union is liable to be rejected.

Workman filed rejoinder on 3.6.14. Wherein they prayed as follows#-

In view of above submissions it is therefore prayed that this Hon'ble Court may graciously be pleased to allow the claim in the favour of the petitioner and against the respondent management with heavy cost so that

unnecessarily plight of the employees without a sufficient cause could be stopped once for all.

On 17.7.2014 this Tribunal framed following issues#-

1. Whether the action of the management of New India Assurance Company Ltd., in not granting increment to Sh. Rajesh Kumar Sr. No. 33552 in the year 2011, 2012 and not granting of ACP to S/Shri Anil Kumar Sharma 20927, Satish Kumar 21232, Amar Singh 16558, Mahendra Kumar 16866, M.L. Verma 17364 and Man Singh Rawat 17092 is illegal and unjustified? If so its effect?
2. To what relief the workmen is entitled to ?

Several opportunities given to workmen to adduce their evidence but no evidence on behalf of workmen have been filed. Hence this tribunal closed the evidence of workmen so there is no need for management evidence.

In this background there is no option to this Tribunal except to pass No Dispute Award because claimants are not interested to file their evidence .

On the basis of which management cannot be directed to adduce its evidence.

'Reference is accordingly decided and claim statement is dismissed.'

No Dispute Award is accordingly passed.

Dated#-30/10/2015

HARBANSHE KUMAR SAXENA, Presiding Officer

नई दिल्ली, 8 दिसम्बर, 2015

का.आ. 2275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 19/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.12.2015 को प्राप्त हुआ था।

[सं. एल-30011/43/2011-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th December, 2015

S.O. 2275.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2012) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 3-12-2015.

[No. L-30011/43/2011-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present : Shri L.C. Dey, M.A., LL.B. Presiding Officer, CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 19 of 2012

In the matter of an Industrial Dispute between #—

The Workman Smti .Purna Laxmi Das, Casual Cleaner/
Unskilled worker.

-Vrs-

The Management of M/S ONGC Ltd., Cachar, Assam.

APPEARANCE :

For the workman/Claimant : Mr. K. Gogoi, Advocate
Mr. A. Borgohain,
Advocate

For the Management/O.P. : Mr. P. K. Roy, Advocate,
Mr. S. K. Chakrabarty,
Advocate.

Date of Award : 27.11.2015

AWARD

1. This Reference has been initiated on an Industrial Dispute between the Management of ONGC Ltd., Cachar Forward Base, Srikona, Silchar, and their workman Smti Purna Laxmi Das on account of terminating the service of casual cleaner/Unskilled worker w.e.f. 5.6.2010 without notice by the Management, which was referred by the Ministry of Labour, Government of India, New Delhi vide their order No. L-30011/43/2011-IR(M) dated 2.5.2012. The Schedule of this Reference is as under.

SCHEDULE

“Whether the action of the management of ONGC Ltd., Cachar Forward Base, Srikona, Silchar, in terminating the service of Casual Cleaner/Unskilled worker Smti Purna Laxmi Das W/o Late Suresh Das w.e.f. 5.6.2010, without notice and without extending any terminal benefits as well as refusal to reinstate her into the service, is legal and justified? What relief the workman is entitled to?”

2. The case of the workman Smti Purna Laxmi Das, in nutshell, is that she was working in the Medical Dispensary and the Project House of ONGC, Cachar Project, Srikona, Silchar and she was appointed by the Management of ONGC Ltd., Cachar Silchar as a casual/contingent worker. She was entrusted with the task of Cleaning Dispensary and Project house during working hours. The workman had to perform unskilled job as Sweeper/Cleaner, however her service was utilised by the management in respect of different other jobs and the duties performed by her are

similar to those which were done by the regular workers who were provided with higher emoluments better facilities and better living conditions. However, the services of the workman were intentionally and deliberately not regularised by the Management with intent to deprive her from claiming the legitimate rights and privileges available to the regular workers appointed by the Management. During the period of her employment the workman discharged her duties and responsibility with utmost sincerity, interest and integrity to the satisfaction of all concerned, and tried her level best. She placed representation before the higher authority of the Management for increasing her salary in accordance with the price index as well as for regularisation of her service in the ONGC Ltd. After rendering her service for more than 27 years the management all of a sudden, without any cause, notice, notice pay and compensation as required under law, retrenched the services of the workman with effect from June, 2010. The workman pleaded that her service for a period of more than 27 years, which render in the manner as was done by regular workers of the Management and hence, the workman could not be defined and/or termed as Casual Contingent worker. The Management deliberately and maliciously engaged the workman to work for marginally less than 240 days in a year as per their record with a view to avoid its obligation and provided under the provision of Industrial Dispute Act, 1947. It is also averred by the workman that by virtue of her long standing employment under the Management and on account of her vast practical experience gained out of such employment, the workman is no longer an unskilled casual/contingent worker, and as such, the said management is under legal liability to absorb the workman by regularising her service. But the Management has adopted unfair labour practice by not regularising her service. The Management employed her for not less than 27 years from 1985 upto 4.6.2010 deliberately showing the period of employment marginally less than 240 days in each year despite working for more than 240 days and as such, she ought not have been retrenched from her service without compensation in contravention under the provision of Section 25(F) of Industrial Dispute Act; which resulted her frustration to the expectation that her service can be regularised and with that end in view the workman has become over aged /ineligible to apply for employment elsewhere under public employment. Thus the case of termination of the workman from service by the management is illegal, malafide and actuated with the motive of victimisation and it is an instance of gross violation of principle of natural justice. Hence, the workman is entitled to be reinstated. Under the above circumstances the workman prayed to pass an award in favour of the workman directing the management to reinstate her with full back wages from the date of her retrenchment with all accompanying service benefits made available to her under the law.

3. The Management contested the proceeding filing written statement, stating inter-alia, that the order of reference is incompetent and not sustainable in the eye of law since it is the admitted position that the workman Smti Purna Laxmi Das was a casual cleaner and was not in the Roll of the ONGC Ltd, there could be no question of termination of service of the casual cleaner. The Management, on being approached, engaged Smti Purna Laxmi Das, to carry out miscellaneous/petty jobs, which are intermittent in nature on daily wage/part time basis and her service were obtained for a brief period on need basis, and she never did the same nature of job continuously. As such the workman has no legally subsisting, enforceable right to claim reinstatement. The Management of ONGC Ltd. since December, 2009, as a part of their policy decision, has been outsourcing the said miscellaneous and petty jobs and the said worker was earlier awarded to M/S Sulabh International. In view of the above, the order of reference with the terms as mentioned thereunder and not to have been made by the Government, the same being not maintainable in law. Further the workman is not a worker within the meaning of Section 2(s) of the Industrial Dispute Act and as such, the reference made is beyond the scope and ambit of the provision of Section 10 of the I.D. Act, 1947. The Management also stated that the contention of the workman made in paras 3 & 4 of her written statement are quite misleading and not based on fact; since it is not true that the workman was working in the Medical Dispensary and project house of ONGC, Cachar Project Srikona, Silchar and was appointed by the Management of ONGCL as casual/contingent workers by means of selection process since 1985. It is also denied that the workman had been entrusted with cleaning the dispensary and project house during the working hours, as alleged. The management mentioned that at times they engaged outsiders on casual, daily wage on need basis to perform the jobs required intermittently and not continuously, and also not done by the same worker always. The Management also denied that the workman was engaged by means of selection process as per applicable rules and procedures since 1985.

Further case of the Management is that the claims of the workman that during her employment she performed the duties which were performed by regular workers of the ONGC Ltd. who were provided higher emoluments, better facilities and better living condition, and that the service of the workman were intentionally and deliberately not regularised with intent to deprive her from claiming legitimate rights and privileges available to regular workers are not true. The management stated that the regular employees of the ONGC are also appointed against regular vacancies in a definite scale of pay following due selection process and as the workman was never appointed by the Management as a regular worker she can not claim equal status. It is also mentioned by the Management that they

have outsourced the work of hygiene maintenance and at present M/S Biswajit Sharma of Sibsagar has been carried out the said works. It is stated that the workman might have engaged herself in hygiene and maintenance activities intermittently whenever she learnt about requirement of the management to such work done hardly had taken between half and one hours time to clean and sweep a particular area which is the precise nature of job and received payment on daily wage basis as per the entitlement for such unskilled job. The management also denied the statement of the workman that she has been gloriously rendering service for 27 years and without any cause, notice, notice pay and compensation, retrenched her with effect from June, 2010. The management stated that since they never appointed the workman who only got herself engaged on daily wage basis there is no question of her retrenchment and/or issuing any notice or granting notice pay and compensation. There is also no post available in ONGC, Cachar Forward Base for engaging the workman in the said cleaning and sweeping job as the workman only got herself engaged on need basis for half an hour to one hour there can be no question of her deliberate, malicious engagement for marginally less than 240 days a year with a view to avoid obligations and liabilities provided under the provisions of Industrial Dispute Act. The Management further denied that the claimant continuously rendered her service to the management like that of regular worker and the management intentionally refused to engage the workman in regular Roll, and hence, the claim of the workman that by virtue of long standing employment and experience she is no longer unskilled casual/contingent worker and is liable to be absorbed by regularising her services. The statement of the workman that she joined the service of the ONGC for more than two decades and that she was under reasonable expectation that her services would be regularised and with that end in view she has become over aged/ineligible to apply for employment elsewhere for public employment as alleged, are not admitted by the management. Rather they stated that even assuming but not admitting that the workman has ever worked for some period of time, but that by itself cannot entitle her for regularisation, de-hors the provisions of the ONGC recruitment Rules. The management also denied the averments made in paras-17,19 and 20 of claim statement made by the workman stating that the termination of the workman from service by the management of ONGC is illegal, malafide and actuated with the motive of victimisation and that accordingly, it is an instance of gross violation of principle of natural justice as alleged. As such, the workman is not entitled to be reinstated and hence, the claim of the workman is liable to be dismissed.

4. On receipt of the claim statement along with the relevant documents/written statement from both the sides the workman was called for adducing evidence, if any, in

order to prove her case vide order dated 24.2.2014. But the workman after seeking adjournments on different dates appeared on 25.6.2014 and she was examined partly at her instance keeping her further examination reserved for want some relevant documents from the custody of the Management. Accordingly the management was directed to submit the documents. Thereafter the workman remained absent for consecutive seven (7) dates and hence, the case proceeded ex-parte against the workman vide order dated 15.7.2015. The management examined their solitary witness Sri Kripesh Chakrabarty, Dy. Manager, HR, ONGC as MW.1 ex-parte. After closing hearing of management side I have heard argument from the management side.

5. The workman Smti Purna Laxmi Das who was examined partly as W.W.1 stated that she worked as Sweeper/Cleaner in ONGC Dispensary at Link Road, Silchar and on shifting of the said ONGC, Dispensary to Ambika Patty Silchar she had to clean the office premises, dispensary and its toilets etc. She also used to pour water to the water filter, supply drinking water to the staff of the said dispensary. In this way she served in the ONGC Dispensary for 30 years without any disruption and sometimes in her absence due to illness her younger daughter Miss Kanchan Das used to work there. She also mentioned that for first 6/7 years she was paid @ Rs. 200/- per month by the ONGC and thereafter @ Rs.500/- per month for about 7/8 years; and then her wage was enhanced to Rs.700/- per month till her dismissal from service. She also approached the management for enhancement of her wages but it was rejected by the Head Office of the ONGC, Srikona. The examination of the workman (WW.1) was not completed nor she was cross-examined by the Management. Further, the statement of the workman is also not supported by any oral or documentary evidence and hence, such statement of the workman is found having no evidentiary value.

The Management Witness No.1, Sri Kripesh Chakrabarty, the Manager, HR, Cachar Forward Base, Srikona, Silchar stated that the Management occasionally, on being approached by Smti Purna Laxmi Das (W.W.1) engaged herself to carry out miscellaneous/petty jobs which are intermittent in nature on daily wage/part time basis. The ONGC, Cachar Forward Base engaged other worker/workers as well to perform the same job intermittently done by her, and the workman did never performed the same nature of job continuously as such, the workman has no legal and enforceable right to claim reinstatement. He also mentioned that the management, as part of policy decision, has been outsourcing the aforesaid miscellaneous and petty jobs since December, 2009 through some service providers. The MW.1 categorically denied that the claimant had been entrusted with cleaning the Dispensary and Project house during office hours, and that the workman was engaged by the management by means of selection process as per the

rules and procedure since 1985. He also denied the contention of the workman that although she was engaged to perform unskilled jobs as sweeper/cleaner, her service was utilized by the Management in respect of different other jobs; and that the duties performed by the workman were also performed by the regular workers of ONGC Ltd. who were provided with higher emoluments and better facilities with better living condition. The MW.1 also denied the contention of the workman that she was intentionally and deliberately denied regularization with sinister design to deprive her from claiming the legitimate right and privilege made available to the regular workers working in the ONGC. Mr. K. Chakrabarty (MW.1) stated that the claimant having only worked as a daily wager for a limited period against casual requirement of job cannot legally claim regularization since the regular employees of ONGC are appointed against regular vacancies in a definite pay of scale following due selection process. He also added that ONGC has been outsourcing the work of hygiene maintenance and such work was earlier provided by the service provider M/S Sulabh International and at present by M/S Biswajit Sharma of Sibsagar. He further stated that the workman might have engaged herself in hygiene maintenance activities intermittently, wherever she learnt about requirement of the management and such work done never takes more than one hour in any day and the job was only to clean or sweep a particular areas which is a precise nature of job for which the workman received payment on daily wage basis as per the entitlement for such unskilled job which is not a regular post in the ONGC. He also denied that the claimant has never been continuously rendered service for 27 years and the Management without any cause, notice, notice pay and compensation retrenched the service of the claimant from June, 2010. Since the workman was not appointed by the Management and she only got herself claiming for more than 240 days the question of issuing any notice or granting any notice pay and retrenchment compensation does not arise. Further the claimant never rendered continuous service of the ONGC and there is no post available in the ONGC Cachar Forward Base for engaging the claimant for the said cleaning and sweeping job by the ONGC through out sourcing. He also mentioned that the workman herself engaged on need basis for half an hour to one hour on daily wage basis there can be no question of her said engage or marginal less than 240 days in a year with a view to avoid its obligation and liable provided under the Industrial Dispute Act as alleged. The MW.1 again denied that the claimant continuously rendered her service to the management like that of regular works and that by virtue long standing working experience was no longer casual/contingent worker and is liable to be absorbed by regularizing her service. The MW.1 categorically denied that the workman was employed by the management continuously for not less than 27 years from 1985 to 4.6.2010 deliberately showing the period of

employment marginally less than 240 days in each year despite working for more than 240 days. He again mentioned that even assuming but not admitting that the claimant has ever worked for some period of time, but that by itself, can not entitle her for regularization or claim public employment, de-hors the provision of the ONGC recruitment rules. Mr. K. Chakrabarty (MW.1) further mentioned that Mr. Monoj Munde, Assistant Legal Advisor, ONGC, CFB, Silchar submitted the W.S. on 14.2.2014 in this reference vide Exhibit-A supported by an affidavit vide Exhibit-A(1) whereupon Exhibit-A(2) is the signature of Mr. Munde. Consequent upon the transfer of Mr. Munde to other place he (MW.1) has been representing the management.

The MW.1 has produced the original receipt/vouchers in respect of payment of wages to the workman by the management in pursuance of the order dated 3.11.2014 and 3.11.2015 passed by this Court at the instance of the workman, which are marked as Exhibit-B, Exhibit-C, Exhibit-D, Exhibit-E, Exhibit-F, Exhibit-G, Exhibit-H, Exhibit-I, Exhibit-J, Exhibit-K, Exhibit-L, Exhibit-M, Exhibit-N, and Exhibit-O in respect of payment of wages to the workman during the period which she worked as casual worker for the month of February, 2007, March, 07, May, 07 June, 07, November, 07 December, 07 March, 2008, April, 08, June, 08, July, 08, September, 08, December, 08, February, 09 & March, 2009 respectively.

6. On perusal of the record as well as the evidence as discussed above it appears that the workman although claimed that she had been working for 27 years continuously (as stated in her claim statement)/ 30 years (as stated in her evidence in chief), the workman could neither produce any appointment/engagement letter nor adduce any legal evidence or documentary as well as supporting evidence in order to establish her claim. Further the workman although claimed that she was appointed by the management as casual/contingent worker, and that she had been doing the similar nature of work which the regular employees of ONGC were performing for such a long period of 27/30 years continuously and as such, she acquired the right to be regularized while the management without any notice, notice pay, compensation money dismissed her with a view to deprive her from getting the benefit of a regular employee of the ONGC; she could not produce any iota of evidence to show that she had been working continuously and regularly under the management of ONGC for such a long period. The workman also failed to substantiate that she had been discharging the duties of perennial nature against any sanctioned post. Thus it is clear that the workman has not been able to discharge her onus to prove in order to establish her case as revealed in her claim statement.

The evidence of management witness along with their pleading shows that the ONGC occasionally on being approached by the workman, engaged her to carry out

miscellaneous/petty job which are intermittent in nature on daily wage/part time and on need basis for a brief period; and the management of ONGC for their Cachar Forward Base engaged other worker/workers as well to perform the job intermittently done by her. It is also found in the evidence of the Management that since December, 2009, as per their policy decision, the ONGC has been outsourcing the said miscellaneous and petty jobs and that said workman might have engaged herself in hygiene maintenance activities intermittently whenever she learnt about the requirement of the management and such work which never take more than one hour in a day and the job being only to clean or sweep of a particular area with a precise nature of work done by her, and the workman also receive payment as per the entitlement for such unskilled job. In support of this contention the management witness No.1 has proved 14 numbers of documents namely, the Bills submitted by the workman for the month of February, 2007, March, 2007, May, 2007, June, 2007, November, 2007, December, 2007 and March 2008 vide Exhibit-B, Exhibit-C, Exhibit-D, Exhibit-E, Exhibit-F, Exhibit-G & Exhibit-H respectively, and the receipt being the payment for cleaning and up-kit-ment at Silchar/Srikona Dispensary for the month of April, 2008, June, 2008, July, 2008, September, 2008, December, 2008, February, 2009, March, 2009 vide Exhibit-I, Exhibit-J, Exhibit-K, Exhibit-L, Exhibit-M, Exhibit-N, and Exhibit-O respectively. The said documents were produced by the management at the instance of the workman and these documents shows that the payment towards the wages to the workman was made on monthly basis @ Rs.700/- per month and not continuously for consecutive period i.e. months rather intermittently. The workman although in her evidence as well as claim statement mentioned that initially she was paid @ Rs.200 per month and thereafter @ Rs.500/- per month which was increased to Rs.700/- per month regularly; the Management deliberately showing that she worked less than 240 days every year although she worked for more than 240 day. But she has not adduced any evidence in this respect for which the evidence adduced by the management witness No.1 can not be thrown away. The Management witness No.1 categorically denied all the averments made by the workman in her W.S. as well as in her evidence in chief. Such mere statement of engagement by the workman as casual contingent worker and continuous of her service for long 27/30 years which entitled her to be regularized as well as protection of law as provided under the I.D. Act; as made by the workman can not be entertained without any supporting evidence. In this connection I am inclined to rely upon the case,

State of Karnataka—vs—Umadevi (3) published in (2006) 4 SCC 1 wherein

“ 48. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that

they have a right to be absorbed in service. As has been held by this Court, they can not be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.”

In Union of India—vs—A.S. Pillai published in (2010) 13 SCC 448, the Hon’ble Supreme Court dealt with the issue of regularisation of part time employees and the Court refused relief on the ground that part timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/ employer; and being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department; therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

In State of Rajasthan—v—Daya Lal published in (2011) 2 SCC 429 it has been decided as under :

“ Para 12-(i)

* * * * *

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the Court, would not confer upon him any right to be absorbed into service, as such service would be ‘litigious employment’. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

* * * * *

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in

private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute,”

7. In view of my above discussion and having regard to the decision of the Hon’ble Supreme Court as mentioned above it can safely opined that the workman has not been able to establish that she was appointed by the management as casual/contingent worker who is working continuously discharging the jobs of perennial nature at par with the regular employees against the sanctioned post. She also failed to establish that she worked for 240 days in a year in order to be entitled to claim protection under Section 25F of I.D. Act, 1947. Even she failed to adduce evidence both oral and documentary in order to establish her contention made in the claim statement. In the result, it can safely be held that the workman is not entitled to be regularised/reinstated/notice pay and retrenchment compensation as well as protection of law under Article 14,16 of the Constitution of India and the I.D. Act, 1947. Accordingly, the claim of the workman is rejected and the reference is disposed of in negative without granting any relief.

Send the Award to the Ministry as per procedure immediately.

Given under my hand and seal of this court on this 27th Novemeber, 22276015 at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 8 दिसम्बर, 2015

का.आ. 2276.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एच.पी. सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 44/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.12.2015 को प्राप्त हुआ था।

[सं. एल-30011/14/2014-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th December, 2015

S.O. 2276.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2014) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. HPCL and their workman, which was received by the Central Government on 3-12-2015.

[No. L-30011/14/2014-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD****PRESENT :**

Shri R. K. Saran, Presiding Officer,

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

REFERENCE NO. 44 OF 2014**PARTIES :**

The President,
Industrial Mazdoor Congress (INTUC),
Ara-Patna Main Road, Giddha,
Ramendra Narayan Singh,
Market, Giddha Indl. Area, Bhojpur (Bhojpur),
Bihar

Vs.

The Sr. Regional Manager,
HPCL, Regional Office,
6th Floor, Jai Prakash Bhawan, Dakbunglow
Chauraха, Patna-1

Order No.L-30011/14/2014-IR (M) dt.13.08.2014.

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand

Industry : Petroleum & Natural Gas

Dated, Dhanbad, the 16th November, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-30011/14/2014-IR (M) dt.13.08.2014.

SCHEDULE

“Whether the action of the Management of HPCL, LPG Bottling Plant (HPCL), Giddha Bhojpur by not accepting the charter of demand of the Union “Industrial Mazdoor Congress” was justified. If not what remedy lies with the Industrial Mazdoor Congress?”

2. None representation either from the Sponsoring Union or the Management is reported even on the last date on 16.11.2015. Though two Regd. Notices dated 3.09.2014 and & 6.4.2015 were sent on the addresses of the Union concerned and the Management that too failed to respond. The Management by filing an Authority letter has not moved ahead. The case is lying on very beginning

stage of filing of W.S. on the part of the Workman since its coming into existence on 26.08.2014. The issue of the case relates to disapproving of the charter of demands of the Union by the LPG Bottling Plant (HPCL) Management in some way or other amounts to unjustifiable.

By going through the case record, it is evident and apparently clear that the both the parties seem reluctant for going in for final adjudication as the dispute is not in existence real terms and rather it should be closed as ample opportunity was provided to each of them to defend their case, as reflected through the order sheet. And I do not see any logic to hold it on to the period uncertain rather better to dispose of as ‘No Dispute Award’ in the larger interest of justice. Accordingly the case is closed a ‘No dispute Award’ and passed the order to that effect.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2277.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अशोक होटल, दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 25/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/12/2015 को प्राप्त हुआ था।

[सं. एल-42011/118/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2277.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 25/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ashok Hotel, Delhi and their workmen, which was received by the Central Government on 09/12/2015.

[No. L-42011/118/2011-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVATAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 25/2012

The President

Ashok Hotel Mazdoor Janta Union,
Ashok Hotel,

Staff Quarter No.C-48-49,
50-B, Chanakyapuri,
New Delhi – 110 021

...Workman

Versus

The General Manager(HR),
Ashok Hotel, 50-B,
Chanakyapuri,
Delhi 110 021

...Management

AWARD

Reference under Clause (d) of Sub Section(1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 was received from the appropriate Government vide letter No.L-42011/118/2011-IR(DU) dated 20.01.2012 to the following effect:

‘Whether the action of the management of Hotel Ashok, a unit of ITDC, New Delhi in terminating the services of Shri Pradeep S/o Shri Ganga Saran and 10 others (Total eleven) as detailed in annexure ‘A’ of the ID w.e.f. 19.11.2010 is legal and justified? What relief the workman concerned are entitled to and from which date?

2. Factual matrix as contained in the statement of claim shows that Ashok Hotel (in short the management) was using services of 14 employees in ETP Plant of the management thorough M/s. Dophin Aqua Cure Pvt. Ltd. from the dates mentioned against the names of employees in Annexure. Matter regarding regularization of their services was taken up by the Union with the Labour Department and after the failure of the conciliation, the above reference was received. Workers mentioned in Annexure A were continuously working with the in ETP Plant in shifts round the clock. Their attendance was also marked in the I.Card Section of the management as well as in the ETP Plant. Salary bill of the workmen were being verified by the management and payment was made through contractor. Officials of the management used to assign job to the workmen and also supervise their work. Job carried out by the workmen was regular in nature and ETP Plant is still functioning in the premises of the management.

3. As per averments, workers had worked for 240 days in each calendar year and as such, they are entitled for regularization of their services with the management. No notice was served upon the workers at the time of their termination, as such removal of the workman is in violations of the Industrial Disputes Act, 1947(in short the Act). No service compensation was paid to the workman, thus resulting in violation of Section 25F and 25N of the Act. Contractor was also not having licence from the Labour Department of the Central Government, as such, contract between the management and the contractor was illegal, sham, unlawful and a camouflage. It is also alleged that as per Contract Labour Act, 1970,

workmen were entitled to equal pay at par with the regular employees, but the management was paying minimum wages, thus resulting in violation of Contract Labor Act, 1970. Workmen were not paid their wages from 01.10.2010 to 18.11.2010 and they were ultimately removed from service on 19.11.2010 without assigning any reason. Workmen have protested before the management on 22.11.2010 regarding their illegal removal and non-payment of wages. Ashok Hotel Mazdoor Janta Union also wrote letters on 30.11.2010 and 13.12.2010 regarding illegal removal from service of the employees. Workers are now unemployed and facing great financial problems. As per Standing Orders of management, Clause No.3, there is no provision classification of employees where there is no provision to engage any employee through contractor and management can use the employees only as Permanent, Temporary, Badlis, casuals and probationers. During service, workman herein were not given any kind of leave, which is also in violation of Shops and Establishment Act and act of the management is totally unlawful and illegal. Workman was also entitled for bonus for each financial year, which was not paid by the management. Officials of the management used to allot job to the workmen and also supervise their job from time to them and for all purposes were working under the administrative control of the officers of the management.

4. Finally prayer has been made that the workmen, whose services have been terminated be reinstated with full back wages and management be directed to treat them as permanent employees as per Standing Orders of the management.

5. Management was put to notice, who filed written to the statement of claim filed by the workmen. Several preliminary objections have been taken and it has been specifically alleged that the workmen herein are employees of M/s. Dolphin Aqua Cure Pvt. Ltd., as such, claim filed against the management is not maintainable and the management is neither a necessary nor a proper party for adjudication of the claim. The Tribunal lacks jurisdiction to adjudicate the claim filed by the workmen, inasmuch as the claimants are employees of M/s. Dolphin Aqua Cure Pvt. Ltd. and the appropriate authority would be the Labour Court created under the Government of National Capital Territory of Delhi and not this Tribunal under the Central Government. It is also alleged that the management entered into an annual maintenance contract with M/s. Dolphin Aqua Cure Pvt. Ltd. which was on principal to principal basis and all the persons deployed for service in the said agreement, including the workmen herein, were permanent employees under the employment of M/s. Dolphin Aqua Cure Pvt. Ltd. and not that of the management.

6. Management on merits denied that the management was using services of the 14 workman herein in its ETP Plant. Management denied all the material averments

contained in the statement of claim. It is denied that the claimants were working under with the management. It is also denied that attendance of the workman herein was marked in I Card Section as well as ETP Plant of the management. The answering management has no rile with regard to marking of attendance of the employees of M/s. Dolphin Aqua Care Pvt. Ltd. It is also denied that the workman herein were working for the answering management at any point of time for a period of 240 days or more in any calendar year. Finally, prayer has been made for dismissal of the claim filed by the workman.

7. Against this factual background, my learned predecessor framed the following issues:

- (i) Whether the claimants' services were terminated by the contractor, namely M/s. Dolphin Aqua Care Pvt. Ltd. or by the management of M/s. Ashok Hotel?
- (ii) Whether M/s. Dolphin Aqua Care Pvt. Ltd. is a necessary party?
- (iii) As in terms of reference.

8. Claimant in support of its claim examined Shri S.S. Upadhyay as WW1, Shri Allanoor as WW2, Shri Mohammad Saddik as WW3, Shri Pradeep Kumar as WW4, Shri Ram Sanjivan as WW5, Shri Ganesh as WW6, Shri Manoj as WW7 and Shri Mukesh Kumar as WW8 and tendered in evidence, their affidavits Ex.WW1/A to Ex. WW1/8. Management in order to rebut the case of the claimant examined Shri Suresh Chandra as MW1, who tendered in evidence his affidavit which is Ex.MW1/A.

Item No. (i) and (iii)

9. Both these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently disposed of.

10. Since affidavits filed by most of the workmen are on the same lines as that filed by Shri S.S. Upadhyay, General Secretary of the Union, as such, it is proper to refer to the affidavit of Shri S.S. Upadhyay, which Ex.WW1/A. It is clear from perusal of the above affidavit that it is in tandem with the averments contained in the statement of claim. Shri Upadhyay has been subjected to cross examination by the management and there is hardly anything in the cross examination to impeach his credit. He has clarified that he is appearing in the capacity of President of the Union. He has admitted that no appointment letter was issued in favour of the workmen herein and they were engaged on the job by the management. He has further admitted that payment of salary was made to the claimant by the contractor after receiving the same from the management (Ashok Hotel). Contractor also used to deduct provident fund contribution from the wags of the claimant and as per rule, this contribution ought to have been deposited in the Trust Account. He has specifically

denied that claimants were employed by M/s. Dolphin Aqua Cure Pvt. Ltd. and clarified that employees of the management used to supervise the work of the claimants and assign job to them. Their attendance was also marked by the management and the claimants unemployed as on date.

11. To the same effect is the affidavits filed by Shri Allanoor, Shri Mohammad Saddik, Shri Pradeep Kumar, Shri Ram Sanjivan Shri Ganesh, Shri Manoj and Shri Mukesh Kumar. Shri Upadhyay also filed written arguments, alongwith judgment of the Hon'ble Supreme Court so as to support his submissions. The management, in order to rebut the case of the workmen, examined Shri Suresh Chandra as MW1.

12. It is necessary to mention at the outset that the contractor, M/s. Dolphin Aqua Cure Pvt. Ltd. has not been examined either by the workman herein nor the management. Admittedly, M/s. Dolphin Aqua Cure Pvt. Ltd. has not been arrayed as a party in the present reference. During the course of arguments, it was not disputed that the workman herein were deployed in ETP Plant of the management from the dates mentioned in Annexure A. Later on, their services were terminated and now they are not at all in employment of the management. It was also not disputed that annual contracts is being given by the management of Ashok Hotel from time to time to different contractors, though employees mostly remained the same.

13. Now, the vital question which requires consideration in the present case is whether the workmen were in the employment of the management or were deployed by M/s. Dolphin Aqua Cure Pvt. Ltd. from the date mentioned in Annexure A. Equally important is also the question whether agreement between the management and M/s. Dolphin Aqua Cure Pvt. Ltd. is genuine or the same is simply sham and a camouflage so as to deny status of workmen under the principal employer herein. It is also appropriate to refer to the statement of Shri Suresh Chandra, MW1, who specifically alleged in the affidavit that the claimants were permanent employees of M/s. Dolphin Aqua Cure Pvt. Ltd. and in the employment of M/s. Dolphin Aqua Cure Pvt. Ltd.. He has further averred that the management is registered under the provisions of Contract Labour (Regulation & Abolition) Act, 1970 and Certificate of Registration dated 12.09.2006 of M/s. Dolphin Aqua Cure Pvt. Ltd. is Ex.MW1/1. It is clear from the cross examination of this witness that he is an employee of ITDC and is working with the management since April 2011. Thus, during the relevant period, i.e. period prior to termination of the claimants herein, he was not working as Deputy General Manager with the management. He has further clarified that Shri Nemi Chand was the Junior Engineer under whose supervision ETP Plant was installed. He further deposed that Board of Directors of

ITDC sanctioned staff strength of all categories. There was no sanction in respect of ETP Plant. Since management was not having manpower in ETP Plant, as such, services of M/s. Dolphin Aqua Cure Pvt. Ltd. was taken for the above work. He made a vital admission that the ETP Plant is functioning regularly. He has also admitted that the workman, even today, are working in ETP Plant. He has admitted that in the Certified Standing Order, under Section III, classification of employee, there is a clause wherein it is indicated under what category an employee can be appointed. He has further admitted that there is no provision of appointing contract employees in the classification. He also admitted that regarding EPF Trust in the management, which stopped functioning since August 2014. Being Deputy General Manager, this witness was not aware whether the above trust was de-recognised by Regional Provident Fund Officer vide order dated 28.12.2010 due to violation of the rules. Further, management had not issued any show cause notice or charge sheet before terminating services of the workman herein, because they were employed by M/s. Dolphin Aqua Cure Pvt. Ltd.. It is pertinent to mention here that this witness has admitted in his cross examination 'It is also correct that even today, workman are working in the ETP Plant, under my supervision.' He has admitted issuance of order Ex.WW1/7 by Shri Ramanand. It is clear from perusal of document Ex.WW1/6 that Shri S.P. Verma, General Manager(HR) has issued letter to the contractor M/s. Sparkling Enterprises when surprise checking was done by the management and workers were found sleeping there. The contractor was advised to remove all the contractual employees immediately. Thereafter, letter Ex.WW1/7 has been issued which shows that during the intervening night of 24/25.08.2008, workers were found sleeping on duty. It is thus clear from perusal of the above two documents that workmen herein were employed by different private contractors for different periods, yet supervisory control was with the management. The above two letters admittedly are not of the last contractor, M/s. Dolphin Aqua Cure PVt. Ltd. under whom the workman herein were working during that period, but it throws ample light on the fact that the management was having supervisory control over the workers in respect of the work which have been outsourced to private contractors under the Contract Labour Act, 1970. Since Shri Suresh Chandra, MW1 has categorically admitted that ETP Plant is still functional as on date and workers have been deployed in the said plant were functioning regularly, it is clear that the work in the present case is regular and permanent in nature. Though Shri Suresh Chandra, MW1 has tendered in evidence copy of contract Ex.MW1/W2, but merely tendering of this contract document of 2006 is not of much help to the case of the management inasmuch as there is ample evidence on record to suggest supervisory control over the ETP Plant was that of the

officials of Ashok Hotel. Entries of the workman was being regulated by the management of Ashok Hotel and workman, even at present, are working regularly in the said ETP Plant. It is further clear from overall statement of Shri Suresh Chandra MW1 that functioning of the ETP Plant is necessary for running Ashok Hotel.

14. During the course of arguments, Shri Upadhyay, learned authorized representative appearing on behalf of the claimant place strong reliance upon the case of Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others (2001) 7 SCC 1, wherein the Hon'ble Supreme Court considered extensively various provisions of the Industrial Disputes Act, 1947 as well as Contract Labour Act, 1970 along with relevant notification issued under Section 10 of the Contract Labour Act, 1970. A critical appraisal of the above judgement would show that the Hon'ble Apex Court has taken into consideration the entire spectrum of the case law on the subject and held in para 107 as under:

107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.

15. Ratio of the above judgement has been cited with approval in all the subsequent pronouncement by the various High Courts as well as the Hon'ble Supreme Court and while making various conclusions, ratio of the law in Hussanbhai case (three judgements decision) was approved and ratio of the judgement in Air India Statutory Corporation Vs. United Labour Union (1997) 9 SCC 377 was partly overruled prospectively. It was also made clear that neither Section 10 of the Contract Labour Act nor any other provisions under the Act, whether expressly or by

necessary implication provides for automatic absorption of the contract labour on issuance of notification by the appropriate Government under sub-section (1) of Section 10 prohibiting employment of contract labour in any process, operation or other work in any establishment. Matter is to be decided judiciously by the Industrial Adjudicator where a contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for the work of the establishment under a genuine contract or is merely a ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will be treated as employees of the principal employer who shall be directed to regularise services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder:

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

16. This Tribunal has to keep one thing in mind that the Industrial Disputes Act as well as Contract Labour Act are social and beneficial legislations. The scheme of the Contract Labour Act 1970 is to regulate conditions of workers under the contract labour system and to provide for its abolition by the appropriate Government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of provisions of the Act punishable thereunder. There is also requirement for the principal employer of the establishment to get itself registered under the Act so as to avail the benefit of provisions of the Act.

17. Reliance was also placed upon the case of Management of Ashok Hotel vs Their Workmen decided on 19.02.2013 in WP(C) No.14828/2006 wherein similar

question was involved. It was a case where various workmen were working continuously as safaiwala/ Housemen in the kitchen department etc. and they were alleged to be working directly under the contactor who has entered into a contract with the principal employer, i.e. Ashok Hotel. Strong reliance was placed on behalf of the workmen upon ratio of the case in Steel Authority of India (supra) and contention of the management to the effect that workmen were employees of the contractor was rejected. Further, contract in the said case was also held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

18. In the case in hand also, situation is almost similar and there is ample evidence on record, as discussed above, to show that the workman herein were working under the direct supervision of the management of Ashok Hotel. Some of the workmen had even specifically deposed that their salary was being paid by the officials/Engineers of Ashok Hotel. Work of the ETP Plant, as is evident from statement of MW1, is regular and perennial in nature. It is further clear that contract is being awarded to different contractors on yearly basis and in the year 2006 it was M/s Dolphin Aqua Cure Pvt. Ltd. to whom contract of employment was given by the management. The said contract in the light of the ratio of the decision in Steel Authority of India coupled with evidence on record is held to be sham and a mere camouflage so as to deny relationship of employer(Ashok Hotel) and the workman herein.

19. It is further clear from the critical appraisal of the above judgements that services of the workman is taken in connection with the work of the establishment, by the principal employer through contractor, in that eventuality, contractor merely acts as an agent or a broker on behalf of the principal employer and the workman in such a situation would continue to be a direct employee of the principal employer and not that of the agent or the broker. In the case in hand also, it is clear from the evidence on record, that the workmen herein were admittedly working in the ETP Plant of the management regularly, though alleged to be in the employment of M/s. Dolphin Aqua Cure Pvt. Ltd. Supervisory control upon them remained with that of the management.

20. It is also clear from perusal of the Certified Standing Orders Ex.WW1/1 that Section III details with the classification of employees and the same is reproduced as under:

Section 3 : Classification of Employees

- (a) Permanent
- (b) Temporary
- (c) Badlis
- (d) Casuals
- (e) Probationers

21. Since appointment of contact labour is not contemplated in the above Certified Standing Orders, as such, the engagement of workmen through contract labour is patently against the law and Standing Orders Ex. WW1/1.

21. Claimants have also filed documents Ex. WW1/2 which deals with the deposit of provident fund of the employees engaged by the employer. Similarly, document Ex. WW1/3 shows that contractor or the employer was not depositing the provident fund etc. with the Trust so constituted under the Regulation, as a result of which exemption granted to the management was withdrawn by the Regional Provident Fund Commissioner Delhi, North. There is another document, Ex. WW1/4, which shows the position of employees who were working in the establishment of the management. During the course of arguments, it was not disputed that several posts of various categories are lying vacant in the establishment of the management and have not been filled up so far as the Central Government has not granted permission to fill up the same. In such a situation, one thing is crystal clear that though the work of the workman herein who were admittedly working in the ETP Plant of the management is regular in nature, yet the management is running the said plant by deploying workers through contractors. It is further clear that management has adopted this devise so as to deprive the workmen of regular employment and deprive them of their permanent livelihood, which is totally against the spirit of Contract Labour Act, 1970 wherein it is clearly provided that when a work is regular or permanent in nature, there is no question of employing contract labour, particular when such labour is not covered by any clause mentioned in Section III of the Certified Standing Order.

22. Admittedly, no notice whatsoever was served upon the workman herein before ordering their termination, as majority of them have been working since 2004 and onwards. Thus, in the case in hand, there is violation of Section 25F of the Act, which requires that if a workman has worked continuously for 240 days in a calendar year, then the management is required to issue notice to such workman, which has not been done in the case in hand. Thus, there is no merit in the contention of the management that the workman herein were directly employed by M/s. Dolphin Aqua Cure Pvt. Ltd. when the overall control and supervision remained with the management.

23. So far as question of regularization of the workman herein is concerned, this Tribunal cannot give directions for regularization of the workmen in view of the clear cut ratio of law in Steel Authority of India (supra) wherein it was held that question of regularization is to be decided by the principal employer after taking into consideration the minimum qualification, age as well as availability of posts. There is no such evidence to this effect brought on record, either by the workmen or the management. As such, plea of the workman for regularization cannot be

entertained at this stage. This is to be decided by the management after taking into consideration the necessary rules applicable to such employees governing such regulation.

Issue No. (ii)

24. During the course of arguments, it was strongly urged on behalf of the management that M/s. Dolphin Aqua Cure Pvt. Ltd. was a necessary party to the controversy and in the absence of its impleadment as a necessary party, reference filed by the claimant herein is not legally maintainable. Shri Upadhyay, authorized representative on behalf of the claimant countered the above submissions by urging that the workman herein were in the employment of the management and that payment of wages were made to them through contractor with the prior approval of the management, as such M/s. Dolphin Aqua Cure Pvt. Ltd. is not a necessary party. To my mind, when reference has been made under Section 10 of the Act by the appropriate Government, this Tribunal does not have the power to implead a party. Hence, there is no force in the contention of the management inasmuch as the management should have examined the contractor M/s. Dolphin Aqua Cure Pvt. Ltd. so as to ascertain its terms and conditions. Moreover, M/s. Dolphin Aqua Cure Pvt. Ltd. is simply a proper party and is not the necessary party for the adjudication of the controversy in question. Hence, this issue is answered accordingly.

25. Consequently, it is held that termination of the workman herein, i.e. from 19.11.2010 is held to be illegal and workman herein are entitled to be reinstated. Since it has come in the evidence of the workmen that they are unemployed since the date of their termination and there being no evidence to the contrary led by the management, as such, the workman herein are liable to be reinstated with full back wages from the date of their termination. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 24, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2278.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गोयल कंस्ट्रक्शन एंड इंजीनियर्स एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 21/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9/12/2015 को प्राप्त हुआ था।

[सं. एल-42012/178/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2278.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 21/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Goel Construction and Engineers and Others and their workmen, which was received by the Central Government on 09/12/2015.

[No. L-42012/178/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRIAVATAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 21/2015

Shri Nimai Mandal,
Through Indian Steel and
Metal Workers Union,
1800/9, Govindpuri Extension,
Main Road, Kalkaji,
New Delhi-110 019

...Workman

Versus

1. M/s Goel Construction & Engineers,
C – 503, JVTS Garden,
Chhattarpur Extension,
New Delhi-110 074
2. Health and Family Welfare Centre,
Baba Ganga Nath Marg,
Munirka,
New Delhi

...Managements

AWARD

Central Government, vide letter No. L-42012/178/2014-IR(DU) dated 08.01.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of the workman Shri Nimai Mandal S/o Shri Bhupati Mandal by the management of M/s. Goel Construction & Engineers a sub contractor of NPCC in the establishment of National Health and Family Welfare Centre, Principal Employer w.e.f. 12.06.2013 is just, fair and legal? If not, what relief the workman concerned is entitled to?

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such

statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Nimai Mandal opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman herein as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman herein. Despite service of the notice, initially nobody was appearing on behalf of the workman herein on several dates of hearing and later on, despite granting of opportunities workman herein opted not to file his statement of claim. Thus, it is clear that the workman herein is not interested in adjudication of the reference on merits.

4. Since the workman herein has neither filed his statement of claim nor has led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : December 4, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2279.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गोयल कस्ट्रक्शन एंड इंजीनियर्स एंड अर्द्ध अर्द्ध के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 17/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/12/2015 को प्राप्त हुआ था।

[सं. एल-42012/174/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2279.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 17/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Goel Construction and Engineers and Others and their workmen, which was received by the Central Government on 09/12/2015.

[No. L-42012/174/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRIAVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 17/2015

Shri Zakir Ali,
Through Indian Steel and
Metal Workers Union,
1800/9, Govindpuri Extension,
Main Road, Kalkaji,
New Delhi-110019

...Workman

Versus

1. M/s. Goel Construction & Engineers,
C – 503, JVTS Garden,
Chhattarpur Extension,
New Delhi-110 074
2. Health and Family Welfare Centre,
Baba Ganga Nath Marg,
Munirka,
New Delhi

...Managements

AWARD

Central Government, vide letter No. L-42012/174/2014-IR(DU) dated 08.01.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of the workman Shri Zakir Ali S/o Shri Munna Ali by the management of M/s. Goel Construction & Engineers a sub contractor of NPCC in the establishment of National Health and Family Welfare Centre, Principal Employer w.e.f. 12.06.2013 is just, fair and legal? If not, what relief the workman concerned is entitled to?

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Joginder Sharma opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman herein as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman herein. Despite service of the notice, initially nobody was appearing on behalf of the workman herein on several dates of hearing and later on, despite granting of opportunities workman herein opted not to file his statement of claim. Thus, it is

clear that the workman herein is not interested in adjudication of the reference on merits.

4. Since the workman herein has neither filed his statement of claim nor has led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947 for publication.

Dated : December 4, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2280.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल पब्लिक वर्क्स डिपार्टमेंट एंड अर्दस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 107/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/12/2015 को प्राप्त हुआ था।

[सं. एल-42011/63/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2280.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 107/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the C.P.W.D. and Others and their workmen, which was received by the Central Government on 09/12/2015.

[No. L-42011/63/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRIAVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 107/2013

Shri Surender Kumar Sharma,
Shri Kanwar Pal, Wiremen, through
General Secretary,
All India CPWD (MRM)
Karamchari Sangathan (Regd.),
4823, Balbir Nagar Extension,
Gali No.13, Shahdara,
Delhi-110 032

...Workmen

Versus

1. The Director General (Works),
C.P.W.D.,
Nirman Bhawan,
New Delhi-110 001
2. The Executive Engineer,
ECD-5, C.P.W.D.,
Pushpa Bhawan,
New Delhi
3. M/s Bhardwaj Brothers,
R-32, South Extension II,
New Delhi
4. M/s Shiv Shakti Enterprises,
R-32, South Extension II,
New Delhi
5. M/s Jagat Sharma (Sharma Brothers)
15, Aliganj, Kotla Mubarakpur,
New Delhi-110 003
6. M/s Ramesh Electrical Works,
53/1, Arjun Nagar,
New Delhi-110 053

...Managements

AWARD

A reference was received under clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (in short the Act), vide letter No. L-42011/63/2013-IR(DU) dated 18.07.2013 with the following terms:

‘Whether the action of the management of CPWD in terminating the services of Shri Surender Kumar Sharma and Shri Kanwar Pal, Wiremen (Workmen worked from 01.04.1998 to 16.06.2009) is just, fair and legal? To what relief the workmen are entitled to.’

2. Brief facts giving rise to the present reference are that Shri Surender Kumar Sharma and Shri Kanwar Pal, workmen herein, were engaged as wiremen by the Executive Engineer, Electrical Construction Division-5, CPWD at HUDCO Complex Enquiry Office with effect from 01.04.1998 without any notice, notice pay, retrenchment compensation etc. Workmen were performing their duties continuously on normal working days as well as on Sundays and holidays, who were being paid less wages than that prescribed under the Minimum Wages Act. There are regular employees working as Wiremen in the establishment of the management who are being paid regular pay scales and other allowances as admissible as per Government rules whereas the above said two workmen were doing same nature of work and being paid less wages. Workmen have also annexed their educational qualification, competency licence as Annexure I.

3. Labour Enforcement Officer (Central) has conducted surprise check on 15.06.2009 and found that the management had not been paying the workmen due wages and also noticed that no records were maintained as Labor laws, either by the principal employer or the concerned contractor. It was at that time that the workmen herein came to know that their services were under the contract system, which was purely and camouflage because they were being paid wages by the Junior Engineer/Assistant Engineer of the management. No notice was issued to the workmen for changing their service conditions as per Section 9A of the Act. Copy of the note of the Labour Enforcement Officer is Annexure II. Due to surprise check by the Labour Enforcement Officer, services of the workmen herein was terminated on 16.06.2009. Thereafter, the workmen herein filed a representation to the principal employer, i.e. Executive Engineer and requested for their reinstatement vide Annexure III. Union of the workmen ie. All India CPWD(MRM) Karamchari Sangathan also took up the case of the workmen with the Superintendent Engineer concerned as is clear from annexure IV. However, no action was taken on the same. Resultantly, the workmen union was left with no choice but to approach the appropriate authority for redressal of their grievance through their union and copy of the application is Annexure V. During pendency of the proceedings, management concerned paid wages to the workmen on different dates. However, they were not reinstated. Decision of the claim application dated 17.06.2011 of the Authority under the Minimum Wages Act in favour of the workmen clearly shows that the workmen had been performing their duties continuously under different contractors at various points of time but under the same principal employer. The workmen have been performing their duties continuously with effect from 04.01.1998 to 15.06.2009 and liable to be reinstated in service as well as regularised under the principal employer directly.

4. There are also averments that in CWP No. 4817/99, All India CPWD (MRM) Karamchari Sangathan vs Union of India decided on 26.05.2000, Hon’ble High Court directed the Ministry of Labour for constitution of a Board to look into the aspect of contract system prevalent in CPWD, under Section 10 of the Contract Labour (Abolition and Regulation) Act, 1970. On the recommendations of the Board, Ministry of Labour issued notification on 31.07.2002 for abolishing contract system for 15 posts. The said notification was also circulated by Ministry of Urban Development/Director General of Works CPWD for implementation. However, notification has not been implemented by the CPWD at the level of Executive Engineer/Divisions, which is severe violation of Labour Laws. Work of the workmen was perennial in nature under the principal employer and contract of the management with the contractor is purely sham. Finally, a prayer has been made by both the workmen for reinstatement of their

services with effect from 16.06.2009 with proper pay allowances etc. as well as their regularization.

5. Claim was demurred by the management by filing written statement wherein certain preliminary objections have been taken. It is alleged that the workmen have not approached the Tribunal with clean hands and they did not have locus standi to file the present claim petition. The workmen are not in the employment of Management No.1 and 2. As such, claim petition is alleged to be not maintainable. On merits, in para 2 of 'para-wise reply' of the written statement, it is denied that the workmen herein were engaged as wiremen by the Executive Engineer, Electrical Division, 5 CPWD HUDCO Complex for day to day maintenance works with effect from 01.04.1998. Their services were terminated on 13.06.1999 without any notice, notice pay and retrenchment compensation. It is also alleged that the workmen were neither engaged by management no. 2, i.e. Executive Engineer (E), ECD V, CPW Pushp Bhawan, hence question of their termination of services by the Management No.1 and 2 does not arise. It is also denied that the workmen herein were performing their duties continuously on normal working days as alleged as well as on Sundays and holidays. Management has also denied other material averments contained in the statement of claim and further alleged that it was for the contractor to maintain proper record in respect of the workmen. In the end, prayer has been made for dismissal of the reference.

6. Reply/written submissions have also been filed by Management No. 5, Jagat Sharma, proprietor who has alleged that he is an electrical contractor and running a firm in the name and style of M/s. Sharma Brothers. In January 2009, workmen herein had joined his firm and they were assigned task of looking into electrical complaints of HUDCO, near Ansal Plaza. Both the workmen worked for about 3 months and there were lots of complaints in short period, hence they were directed to be transferred to Dwarka project. Workmen did not join the Dwarka project despite a number of notices sent to them. Thereafter, they have approached Regional Labour Commissioner (Central), Connaught Place Delhi, finally resulting in filing of the present reference petition. Reply is supported by affidavit.

7. Against this factual background, my learned predecessor framed the following issues vide order dated 18.12.2013:—

- (i) Whether there is privity of contract between the claimants and Central Public Works Department? If no, its effects.
- (ii) Whether the claimants abandoned services of M/s. Sharma Brothers, when they were transferred to Dwarka project somewhere in April 2009?
- (iii) As in terms of reference.

8. The workmen herein, in support of their case examined Shri Surender Kumar Sharma and Shri Kanwar Pal Singh as WW1 and WW2. Both these witnesses have tendered in evidence their educational certificates, experience certificate and license of wireman, copy of complaint register, copy of identity card, copy of character certificates, copy of report of Enforcement Officer, copy of application dated 16.06.2009, copy of complaint dated 28.06.2009, copy of demand notice, copy of claim filed before the Authority under the Minimum Wages Act, copy of settlement arrived at before the aforesaid Authority, copy of judgement dated 26.05.2000 passed by High Court of Delhi, copy of reports of the Advisory Committee dated 18.12.2001 and 26.07.2002, copy of notification dated 31.07.2002, prohibiting contract labour on some jobs in the establishment of the management, copy of letter dated 26.09.2002 written by Urban Development Ministry to the management, copy of letter dated 27.11.2002, which was circulated by Director General of the management amongst the officers, copy of award dated 13.02.2013 passed by this Tribunal and copy of espousal resolution and I would be discussing the same in the subsequent paras.

8. Management No.1 and 2, to rebut the case of the workmen, examined Shri Chaman Lal Executive Engineer as MW1, who also tendered in evidence documents Ex.MW1/1 to Ex.MW1/3.

9. I have heard Shri Satish Kumar Sharma, learned authorized representative for the workmen and Shri C.S.S. Tomar, learned authorized representative for the management.

Issue No. 1, 2 and 3

10. All these issues are being taken up together for the purpose of discussion as they are interrelated and can be conveniently disposed of. Shri Surinder Kumar Sharma, appearing as WW1 has tendered in evidence his affidavit as Ex.WW1/A, which is quite comprehensive and is on similar lines as per averments contained in statement of claim. It is clear from overall examination of the affidavit, Ex.WW1/A that both the workmen were engaged as wiremen on 01.04.1998 by Executive Engineer Shri A.K. Srivastava and Assistant Engineer, Shri B.M. Sarkar. He was being allotted work by the Junior Engineer and was looking after complaints of electricity at various places. He was also issued I Card by the department, copy of which is Ex.WW1/3. Management has also issued circulars which shows that work of the workmen were satisfactory. In his affidavit, Ex.WW1/A, he has also referred to the contractor, M/s. Sharma Brothers and that management had also withheld wages of the workmen at the instance of the said contractor. Later on, workmen came to know that they have been shown to be engaged by the contractor and are not directly under the principal employer, i.e. CPWD. Finally their services were terminated on 16.06.2009. Even at that time, arrears of wages was not paid to the

workmen despite demands made by the workmen. It was thereafter that the workmen had approached the union who took up the matter on behalf of the workmen. MW1 Shri Chaman Lal has also made reference to the writ petition decided by the Hon'ble High Court of Delhi on 26.05.2000 wherein directions were given to the Labour Department for constitution of Board so as to pass appropriate notification under Section 10 of the Contract Labour Act in consultation with the Union. After constitution of the Board and in consultation with the officials of CPWD as well as the Union, Government has issued necessary notification wherein contract labour system was prohibited in respect of 15 posts. In his cross examination, Shri Surender Kumar Sharma, WW1 has clarified that he is not working under the contractor and workmen were engaged by CPWD as wiremen. He has also referred to his ITI certificate and that initially he was paid Rs.1800 per month as wages in cash. No salary slip was issued to him. Later on, he approached the Junior Engineer, Shri B.N. Kulwant Singh when posts of wiremen fell vacant in the department, who also conducted his interview and he was engaged as workmen. He is not made any complaint in writing regarding payment of less wages. However, oral complaints were made to the Assistant Engineer. His attendance was being marked by the Junior Engineer and his duty hours were from 9 a.m. to 5 p.m. He has further stated in his cross examination that he is not claimed any relief against the contractors M/s. Bhardwaj Brothers, M/s Ramesh Electrical Works, M/s. Shiv Shakti Enterprises and M/s. Sharma Brothers

11. To the same effect is the statement of Shri Kanwar Pal Singh, WW2, whose affidavit is identical with that of Shri Surender Kumar Sharma WW1 and submissions made by this witness is on the same lines as that of WW1 Shri Surender Kumar Sharma.

12. Management in support of its case examined Shri Chaman Lal, whose affidavit is Ex.MW1/A. It is clear from perusal of the above affidavit that the management has held both the workmen to be employees of the contractors, for which contracts were awarded in favour of the managements No.3 to 6. Workmen, as per submissions of these witness never remained employed with Management No.1 and 2. He has further mentioned in para 8 of the affidavit that regular employees working as Wiremen are getting timescale as per government rules, whereas contractors are making payment to the contractor workers as per Minimum Wages regarding their employment. And record is with the contractor and it is up to the contractor to engage and comply with the contract conditions.

13. It is clear from the resume of evidence on record that the workmen herein were appointed in the year 1988 and factum of their employment has not been specifically denied by Management No.1 in its written statement. There is also ample evidence on record to suggest that the

workmen have diploma in ITI Trade and even prior to their employment in the year 1998, they were doing similar work with different employers. It is clear from perusal of certificate Ex.WW1/1 that Shri Surender Kumar Sharma has passed middle examination from S.H.Int. College Bhadsiana Ghaziabad in the year 1991. There is also diploma certificate in ITI Electrical which shows that Shri Surender Sharma, the workman herein during the year 1987 to 89 has passed ITI Electrical Diploma from Duhai, Ghaziabad. Workmen has also tendered in evidence extract of enquiry office message register Ex.WW1/5 to Ex.WW1/23 which shows that both the workmen from time to time during the year 2008-09 were attending to the electric complaints at the respective places, description of which is given in the above documents. There is also a certificate issued by AE, ECD-V, CPWD, which clearly shows that the workman Shri Surender Kumar was an electrical from 01.04.2003 to 1.1.2008. There is yet another certificate by Assistant Engineer, EX.WW1/26 which establishes that Shri Surender Kumar, workman herein was working in HUDCO Complex, New Delhi as wireman. During the course of arguments, attention of the Tribunal was also drawn to documents/complaints, Ex.WW1/27 and Ex.WW1/28 which is addressed to the Executive Engineer which shows that minimum wages were not paid to the workmen by the Contractor M/s. Bhardwaj Brothers from the year 2009. The workmen has also relied upon due and drawn statement Ex.WW1/28, which again goes to show that the workmen were being paid less than minimum wages during the year 1998 onwards. There is a representation Ex.WW1/30 addressed to the Superintendent Engineer of the Department wherein unfair labor practice being committed by the Executive Engineer in respect of deployment of workmen on contract basis has been highlighted. It is specifically mentioned in the said representation that contract system has been abolished in respect of the above post and the workmen should have been regularised consequent upon abolition of the post on contract basis. They are also not being paid full wages and instances of the same have been mentioned in the above representation.

14. Lastly, the workmen primarily relied upon the notification issued by the Government of India, Ex.MW1/W4(also marked as Ex.WW1/35), which clearly shows that under the exercise of powers conferred under sub-section 1 of Section 10 of the Contract Labour Act, 1970, Central Government in consultation with the Central Advisory Contract Labour Board has prohibited employment of contract labour in respect of wiremen. It has also come in evidence that copy of this notification was circulated to all the Departments and this fact is also established from Office Order Ex.WW1/36 and proceedings in this regard with members of the union and officials of the Board is Ex.WW1/37. Workmen also referred to the award passed by my learned predecessor on 13.02.2013 Ex.WW1/14

wherein similar question was involved and workmen in the said award were ordered to be regularised in service.

15. Shri CSS Tomar, learned authorized representative appearing on behalf of the management strongly urged that the workmen herein were never in the direct employment of the management and their services were hired from time to time by different contractors, i.e. management Nos. 3 to 6. Therefore, there is no relationship of master and servant between the Management No. 1 and 2 and the workmen. Learned authorized representative also relied upon the judgement of the Apex Court in the case of Bengal Nagpur Cloth Mills vs. Bharat Lal (2010) INSC 1084 Ex.MW1/1 and Secretary State of Karnataka vs. Uma Devi (2006) (4) SCC I. I would be referring to the ratio of the above judgements in subsequent paras while drawing my conclusions.

16. Before I proceed to consider ratio of the judgements cited on behalf of management Nos. 1 and 2, it is necessary to refer to the judgement of the Hon'ble Supreme Court in the cases of Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others (2001) 7 SCC 1, on the subject wherein the Hon'ble Supreme Court considered extensively various provisions of the Industrial Disputes Act, 1947 as well as Contract Labour Act, 1970 along with relevant notification issued under Section 10 of the Contract Labour Act, 1970. A critical appraisal of the above judgement would show that the Hon'ble Apex Court has taken into consideration the entire spectrum of the case law on the subject and held in para 107 as under:

107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.

17. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case (1974 (3) SCC 66), the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

18. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to

be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. (1960 (II) LLJ. 233), which was referred with approval in Steel Authority of India.

19. In Shivnandan Sharma (1955(1) LLJ 688), the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

“If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master.”

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

20. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

“Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers’ subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-*contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered

to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management’s adventitious connections cannot ripen into real employment.”

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

21. In Steel Authority of India (*supra*) it has been ruled that the term “contract labour” is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai’s case (*supra*) and in Indian Petrochemicals Corporation case (1999 (6) S.C.C. 439) etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

22. This Tribunal has to keep one thing in mind that the Industrial Disputes Act as well as Contract Labour Act are essentially social and beneficial legislation. The scheme of the Contract Labour Act, 1970 is to regulate conditions of workers under the contract labour system and to provide for its abolition by the appropriate Government as provided under Section 10 of the said Act. Section 7 of the Act requires the principal employer to get itself registered. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of

provisions of the Act punishable thereunder. There is also requirement for the principal employer of the establishment to get itself registered under the Act so as to avail the benefit of provisions of the Act.

23. Reliance was also placed upon the case of Management of Ashok Hotel vs. Their Workmen decided on 19.02.2013 in WP(C) No. 14828/2006 wherein similar question was involved. It was a case where various workmen were working continuously as safaiwala/ Housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who has entered into a contract with the principal employer, i.e. Ashok Hotel. Strong reliance was placed on behalf of the workmen upon ratio of the case in Steel Authority of India (supra) and contention of the management to the effect that workmen were employees of the contractor was rejected. Further, contract in the said case was also held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

24. I have carefully gone through the ratio of law in Bharat lal (Supra) relied upon by Management No.1 and 2. No doubt, in the said case, initially Labour Court has passed an award in favour of the workmen and directed the management to reinstate the first respondent to his previous post with full back wages. In the above case also management has come with the plea that none of the workmen were in indirect employment of the management and there was ample evidence on record to suggest that the workmen were working under the direct supervision of the contractor who was also paying wages directly to them. It was because of the above two reasons that the Hon'ble Apex Court held that the principal employer does not have any control over the workmen, as the workmen was being paid salary directly by the contractor. In such circumstances, the workmen were held to be working directly under the contractor instead of the management. A critical appraisal of the judgement would show that in that case, the employee has suppressed material facts deliberately and rather misrepresented material facts as is clear from para 10 of the judgement of the Hon'ble Apex Court. Moreover, in the said case, there was strong evidence that everything was within the control of the contractor and the management was not exercising any control as principal employer over the said workmen. There is nothing in the above judgement to show that prohibition notification was issued by the Government under the Contract Labour Act or not. However, situation in the case in hand is different. There is ample evidence on record to suggest that supervision, their working and mode of functioning of the employee was directly with management No.1 and 2. It is clear from certificate Ex.WW1/25 that the AE(E) IV, CPWD, New Delhi has issued certificate to the effect that Shri Surender Kumar was working with the department and is working as Electrician

from 01.04.2003 to 01.01.2008. There is another certificate Ex.WW1/26 and the same is also issued by AE(E), ECD V, New Delhi which shows that the workman Shri Surender Singh was working in HUDCO Complex. There is also a due and drawn statement, Ex.WW1/28, which shows that the workmen was working though under the contract of M/s. Bhardwaj Brothers, but they were being paid less wages and this factum was brought to the notice of the management vice complaint, which representation is Ex.WW1/29, wherein factum of payment of less wages has been highlighted. Shri Chaman Lal, Executive Engineer, appearing on behalf of the Management No. 1 and 2, also admitted that Certificate Ex.WW1/4 bears signatures of the SDO. He has also admitted the representation filed by the workmen, copy of which is Ex.MW1/6 (also marked as MW1/W6 and Ex.WW/9). He has admitted regarding filing of representation Ex.MW1/7 (also marked as MW1/W7 and Ex.WW1/30), which was filed by the workmen after termination of their job. I have seen photocopy of the agreement Ex.MW1/1 (marked as Ex.MW1/W1), which entered into between the management and contractor, which is a standard document and the department while outsourcing work to the various contractors, has used the same for the purpose of awarding the work. In the case in hand there is nothing on record that the contractor was a duly licenced contractor as required under Section 12 of the Contract Labour Act. All these things were required to be proved by the principal employer, i.e. the management No.1 and 2 before awarding contract to a private contractor.

25. There is also another aspect of the matter, which cannot be ignored. It is clear from perusal that in notification Ex.WW1/35 that the Government has issued notification under Section 10 of the Contract Labour Act, 1970 prohibiting employment, where there is mention of 15 categories. Workmen in the present is wiremen, and against entry No. 5 of the Notification, there is mention of post of wiremen. Thus, it is clear that the Government is prohibited from engaging contract labour so far as post of wiremen is concerned. The above notification was ordered to be circulated vide OM Ex.WW1/36.

26. Despite issuance of prohibition notification, Ex.WW/35, it is clear that management No.1 and 2 has outsourced work to private contractors on the basis of various agreements entered into between the management and the contractors, Management Nos.3 to 6. Since award of contract to a private contractor, Management No.3 to 6, is patently against the provisions of contract labour Act, 1970, as well as notification issued under Section 10 of the said Act vide Ex.MW1/W4 (also marked as Ex.WW1/35). As such, these contracts are legally held to be null and void.

27. The learned authorized representative of management No.1 and 2 also relied upon the case of State

of Karnataka vs Uma Devi (1998) SCC 1A. I have carefully gone through the ratio of the above authority and the same is not applicable so far as the question of engagement of contract labour through contractor is concerned. Hon'ble Apex Court in ONGC vs. Petroleum Coal Labour Union (2015) Lab IC 2483, has considered the ratio in Uma Devi (supra) and held that even if due procedure was not followed in the appointment of concerned workmen in the post of watch and ward security, this does not disentitle them of their right to seek regularization of their services by the Corporation under the provisions of certified standings orders as they have rendered more than 240 days of service in a calendar year from the date of their appointment in the year 1988. In the said case also, Corporation has outsourced security to private contractor. However, in 1976, notification was issued for abolition of contract labour for the post of watch and security men etc. In the said case also strong plea was raised on behalf of the management that in view of ratio of law in Uma Devi case, workers are not entitled to be regularized after abolition of contract labour. This contention of the management/Government was rejected by the Hon'ble Supreme Court in ONGC (supra):

'Uma Devi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and the PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.'

28. There are specific observations in the above judgement that provision of the Industrial Disputes Act and the powers of the Industrial and Labour Courts were not at all under consideration in Uma Devi case. Issue pertaining to unfair labor practice was neither the subject matter of decision nor the same was denuded in Uma Devi Case. Therefore, reliance placed by the management herein upon Uma Dev Case so far as question of contract labour being sham or camouflage agreement is concerned, is totally misplaced and is of no help to Management No.1 and 2. Since in the case in hand, engagement of contract labour through private contractor is specifically prohibited in view of the notification issued by the Central Government, as such deployment of wiremen through so called contractor is held to be of no use and the said contract as stated above are stated to be legally null and void. Act of the management are means of unfair labour practice.

29. Hon'ble Apex Court in the case of Ajay Pal Singh vs. Haryana Warehousing Corporation (2015) 6 SC 321 again considered ratio of Uma Devi case (supra) relied upon by the management and held as under:

'When no such plea is taken by the employer in the order of retrenchment that the workman was appointed in violation of Articles 14 and 16 of the Constitution of India or in violation of any statutory rule or his appointment was a backdoor appointment, while Page 15 15 granting relief, the employer cannot take a plea that initial appointment was in violation of Articles 14 and 16 of the Constitution of India, in absence of a reference made by the appropriate Government for determination of question whether the initial appointment of the workman was in violation of Articles 14 and 16 of the Constitution of India or statutory rules. Only if such reference is made, a workman is required to lead evidence to prove that he was appointed by following procedure prescribed under the Rules and his initial appointment was legal.'

30. Since in the case in hand, there is no reference made by the appropriate Government for determination of the question whether appointment of the workmen herein are in violation of Article 14 and 16 of the Constitution or their initial appointment are illegal or against the statutory rule, as such, Uma Devi case is not at all of any legal help to the case of the management. It is also necessary to mention here that there is ample evidence on record that the workmen herein were not even being paid minimum wages, which is statutory requirement under the Minimum Wages Act and the same amounts to commission of unfair labour practice. It is strange that despite the fact that the workers have specifically made a representation Ex.WW1/30 to the competent officials regarding malpractice being committed and lesser wages being paid to them, but the same was not found enough to awaken the administration from its slumber. Net result of the above discussion is that the contracts which have been referred by Shri Chaman Lal, Executive Engineer, in his statement, though not filed with the affidavit, are not of any use so as to hold the workmen hereunder to be in the employment of the contractor inasmuch as issuance of prohibition notification under Section 10 of the Contract Labour Act 1970, where post of wiremen is mentioned in the prohibition clause. After issuance of the above notification, management was required to fill up the post (wiremen) in accordance with rules and regulations. Management has admitted that still there are some regular workmen working in the department. It also shows that the work of wiremen is regular and perennial in nature. In such situation, the so called agreements between the contractor and the management herein are held to be legally void, sham and camouflage so as to bar the workmen herein from claiming status of being in the employment and control of Management No.1 and

31. It is clear from perusal of contract/agreement Ex.MW1/W1 that the same was entered between the principal employer Management No.1 and 2 and M/s. Bhardwaj Brothers and the said agreement was valid with effect from 25.09.1998 to 24.09.1999. Though the other agreements with the other co respondents have not been exhibited, yet a careful perusal of the same would show that they are same in every respect. Since they are standard documents and only name of the contractors from to time has been changed, all these agreements are admittedly for a period of one year. As already held, the above documents are simply sham and camouflage so as to deprive the workmen of their status of being directly under employment of the principal employer, i.e. Management Nos. 1 and 2, as such, these documents/agreements are even otherwise contrary to the notification, Ex.MW1/W4(also marked as Ex.WW1/35) issued under Section 10 of the Contract Labour Act, 1970, as such legally void. As a result of the above discussion, it is held that there is no privity of contract between the workmen and Management Nos.1 and 2. Since there is no evidence on record to suggest that the workmen herein abandoned their services from M/s. Bhardwaj Brothers when they were transferred to Dwarka project, as such issue No.1 to 3 are decided against the management and reference is answered in favour of the workman herein.

Relief

28. As a sequitur to my aforesaid discussions, it is held that the workman are entitled to be reinstated after their so called termination without any notice with effect from 16.06.2009 and payment of back wages with all consequential benefits since they remained unemployed after 16.06.2009 till date. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 30, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2281.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनटीपीसी, एफएसटीपीपी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 17/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/12/2015 को प्राप्त हुआ था।

[सं. एल-42011/18/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2281.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Ref. No. 17 of 2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the NTPC, FSTPP and their workmen, which was received by the Central Government on 9/12/2015.

[No. L-42011/18/2015-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 17 of 2015

Parties:

Employers in relation to the management
of NTPC, FSTPP

AND

Their workmen

Present :

Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the management : None

On behalf of the workman : None

State: West Bengal Industry: Thermal Power

Dated: 26th November, 2015

AWARD

By Order No.L-42011/18/2015-IR(DU) dated 24.03.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the Management of M/s. UTC Fire & Security Services, contractor of NTPC, FSTPS, Murshidabad in terminating services of 4 No. of workmen namely Sri Shamik Khan, Sri Mubarak Hussain, Sri Fafikul Sk. & Sri Zaminul Sk. without following statutory rules and regulations is justified or not? If not, what relief the workmen are entitled for?”

2. When the case is taken up today for hearing, none appears on behalf of any of the parties. It appears from the record that the union at whose instance present reference has been made has not turned up for three consecutive

dates in spite of service of notice. From the above conduct of the union it may reasonably be presumed that the union is not at all interested to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

3. In view of the above facts and circumstances, present reference is disposed of by passing a "No Dispute Award".

Dated, Kolkata,
The 26th November, 2015

JUSTICE DIPAK SAHARAY, Presiding Officer
नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2282.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीआईएमएफआर (सीआईएसआर) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 18/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/12/2015 को प्राप्त हुआ था।

[सं. एल-42011/228/2011-आईआर (डीयू)]
पी. के. वेनुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2282.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Ref. No. 18 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the CIMFR (CISR) and their workmen, which was received by the Central Government on 09/12/2015.

[No. L-42011/228/2011-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act, 1947

Reference: No.18/2012

Employer in relation to the management of
M/s. C.I.M.F.R

AND

Their workman

Present :

Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate
For the workman : Shri D.K. Sah, Rep
State : Jharkhand Industry-Science & Tech.

Dated : 9.11.2015

AWARD

By order No. L-42011/228/2011-IR (DU) dated 28/02/2012, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of CIMFR (CISR) in not sending the name details of S/Shri Shvitosh Sutradhar and 21 other casual workers (List enclosed) to the Competent Authority regarding grant of temporary status to get wages and other facilities at par with the regular workers is legal and justified? What relief the workmen are entitled to?"

ANNEXURE

List of Workmen

Sl. No.	Name of the candidate	Date of joining	Section/Div.
1	2	3	4
1.	Shvitosh Sutradhar	2002	Flame & Explosion Lab
2.	Subas Singh	2003	-do-
3.	Shyamal Kumar Mandal	2003	-do-
4.	Prakash Kumar Mandal	2001	A/C Plant
5.	Nurul Hasan Hindvi	Nil	Respiratory Protection Lab.
6.	Madhusudan Mahato	1997	Mine Stowing and Filling
7.	Kamal Gope	Nil	Thick Seam Mining
8.	Kapura Devi	Nil	Canteen
9.	Shankar Koranga	2003	Flame & Explosion Lab
10.	Darik Koranga	2003	-do-
11.	Ashoka Nand Mishra	2000	Human Resource Dev. (HRD)
12.	Ajay Kumar Singh	Nil	Mines System Engineering
13.	Raju Koranga	2003	Mines Electronics
14.	Kartik Mandal	1988	Guest House

1	2	3	4
15.	Ashoka Nand Pathak	1993	EPABX
16.	Loknath Yadav	1998	-do-
17.	Barun Kumar Pathak	1993	Gest House
18.	Subrata Mishra	1990	-do-
19.	Swpan Kumar Banik	1989	-do-
20.	Sushanta Mitra	1989	-do-
21.	Bal Krishna Choudhary	1993	-do-
22.	Uttam Ganguli	2002	-do-

2. The case is received from the Ministry of Labour on 21.03.2012. After receipt of reference, both Parties are noticed, The sponsoring Union files their written statement on 21.03.2013. The management also files their written statement-cum-rejoinder on 05.03.2014. One witness adduced on behalf of the workman & one document marked on behalf of the workman i.e "X" (for identification).

3. The case of the workmen is that shri Shvtoch Sutradhar & 12 others have been working as casual worker in different department of erstwhile CMRI and which is presently named CIMFR since more than 10-20 years with entire satisfaction of higher authorities and it is also submitted that workman has been permanently to do the job as regular, although these workmen are doing same and similar nature of job like that of a permanent workmen of CIMFR.

4. It is also submitted that the workman has been requested to send before the competent authority the same of these 22 workmen as per list enclosed for granting temporary status with a view to enable them to get wages and other facilities at par with the regular worker but the management inspite of their repeated assurance did not sent their name resulting these workers could not get their legitimate right. The workmen are entitled to get the wages and other benefits at par with the permanent workmen as per the equality before law and the management is bound to follow it but the management could not do it, hence reference arose.

5. The management's case is that previously the Govt. of India Ministry of Labour referred an industrial dispute to the Central Govt. Industrial Tribunal No.-2 of same Union that is registered as Ref. case No. 2/10. And during the pendency of reference case No. 2/2010 of CGIT No-2, the Sponsoring Union raised present industrial Dispute. It is also submitted by the management that the list of workman of both the reference workman concerned are same, and the management is same & Sponsoring Union is same.

6. It is also submitted by the management that, just to avoid conflict of judicial decision by Court of concurrent

jurisdiction from adjudicating upon both parallel reference as the matter in issue is substantially the same. Therefore the present reference is not maintainable.

7. It is also submitted by the management, that the workman concerned is a contractor workman and not employer-employee relationship exists between CMRI/ CIMFR and the workman. They are working under direct control and supervision of the contractor. And the contractor makes payment to their workmen.

8. Short point to be decided in this reference, is to direct CIMFR management to give temporary status to the present workmen concerned or not.

9. It is stated by the workman that they are rendering service to CIMFR as casual employee. The workman further prayed to give them temporary status.

10. The workmen concerned have save and except filing their I.D card as photocopy have not filed any document, regarding their wages particulars. And that I.D card is also not marked as Exhibits. Unless the workmen rendered services to an organization more than 240 days in any calendar year, but he is not entitled to either to be regularized or even claim of temporary status.

11. One of the workmen though examined in the case, has not stated so, rather he said some of his co-workmen filed a dispute for regularization before CGIT No.-2 which is pending. This may be situation, this Tribunal is not in a position to grant relief to the workmen concerned.

12. Considering the facts and circumstances of this case, I hold that the action of the management of CIMFR (CISR) in not sending the name details of S/Shri Shvtoch Sutradhar and 21 other casual worker (List enclosed) to the competent Authority regarding grant of temporary status to get wages and other facilities at par with the regular workers is not legal. Hence they are not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2283.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सूक्ष्म तरंग अनुरक्षण के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या 15/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2015 को प्राप्त हुआ था।

[सं. एल-40012/08/94-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2283.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 15/1995) of the Industrial Tribunal, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Suksham Tarang Sanrakshan and their workman, which was received by the Central Government on 06-08-2015.

[No. L-40012/08/94-IR(DU)]

P. K. VENUGOPAL, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी— श्रीमती अनिता शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ. न्या. (केन्द्रीय)–15/1995

दिनांक स्थापित : 19/6/95

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्र. एल-40012/8/94-आईआर(डीयू) दिनांक 9/6/95

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) व उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

1. नवनीत सिंह पुत्र छीतर

2. सूरजमल पुत्र रघुनाथ मीणा

द्वारा संयुक्त महासचिव, हिन्द मजदूर सभा, राजस्थान,
बंगाली कोलोनी, छावनी, कोटा

—प्रार्थीगण श्रमिक

एवं

सहायक अभियन्ता—II सूक्ष्म तरंग अनुरक्षण, नयापुरा, कोटा

—अप्रार्थी नियोजक

उपरिथित :

प्रार्थीगण श्रमिक की ओर से प्रतिनिधि : श्री अरुण शर्मा

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री श्याम गुप्ता

अधिनियम दिनांक : 3/9/2015

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 9/6/95 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जावे) की धारा 10(1)(घ) एवं उप-धारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

“क्या प्रबन्धन सहायक अभियन्ता, द्वितीया, सुक्ष्म तरंग अनुरक्षण, नयापुरा, कोटा द्वारा कर्मकार सर्वश्री नवनीत सिंह पुत्र श्री छीतर एवं सूरजमल मीणा पुत्र श्री रघुनाथ मीणा की सेवायें में दि. 18/12/90 से समाप्त करने की कार्यवाही उचित एवं वैध है? यदि नहीं तो सम्बन्धित कर्मकार किस अनुतोष के हकदार हैं?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थीगण नवनीत सिंह एवं सूरजमल मीणा की ओर से संयुक्त रूप से न्यायाधिकरण के समक्ष क्लेम स्टेटमेन्ट प्रस्तुत कर व्यक्त किया गया है कि प्रार्थीगण को सहायक अभियन्ता—II, सूक्ष्म तरंग अनुरक्षण, नयापुरा, कोटा ने सेवा में नियोजित किया था। प्रार्थी नवनीत सिंह की नियुक्ति तिथि 13/10/89 है व प्रार्थी सूरजमल की नियुक्ति तिथि 11/12/89 है। प्रार्थीगण की प्रथम नियुक्ति सहायक अभियन्ता, माईक्रोवेव प्रोजेक्ट के यहाँ हुई थी, वहाँ से प्रार्थीगण को दिनांक 1/8/90 को स्थानान्तरित कर नियोजक के यहाँ भेजा गया था, परन्तु अप्रार्थी नियोजक ने प्रार्थीगण को बिना कोई कारण बताये व बिना किसी पूर्व सूचना के अचानक दि. 18/12/90 से नौकरी से अवैध रूप से हटा दिया। प्रार्थीगण ने अपनी प्रथम नियुक्ति दिनांक से ही नियोजक के यहाँ दि. 17/12/90 तक निरन्तर कार्य करते हुए उक्त अवधि में 240 दिन से अधिक समय तक कार्य कर लिया था, परन्तु अप्रार्थी नियोजक ने प्रार्थीगण को औ.वि. अधिनियम की धारा 25-एफ के प्रावधानों की पालना किये बगैर सेवासे निष्कासित कर दिया। अप्रार्थी नियोजक ने औ.वि. नियमों के नियम 77 के अनुसार वरिष्ठता सूची का प्रकाशन नहीं किया, प्रार्थीगण को नौकरी से हटाये जाने के समय उनसे कनिष्ठ कई अन्य श्रमिक नियोजक के नियोजन में मौजूद थे, इस प्रकार प्रार्थीगण को बाद आये पहले जाये सिद्धांत की अवहेलना कर नौकरी से निकाला जाना अधिनियम की धारा 25-जी का उल्लंघन है। प्रार्थीगण ने दिनांक 7/8/91 को केन्द्रीय प्रशासनिक न्यायाधिकरण, जयपुर के समक्ष विवाद प्रस्तुत किया था जिसमें दि. 13/12/93 को यह निर्णय दिया गया कि प्रार्थीगण का विवाद, औ.वि.अधिनियम के अन्तर्गत आता है तथा इस अधिनियम के अन्तर्गत ही प्रार्थीगण कार्यवाही करे, इस कारण यह विवाद देरी से प्रस्तुत किया जा रहा है। परिणामतः उक्त क्लेम स्टेटमेन्ट प्रस्तुत कर प्रार्थीगण ने स्वयं को पिछले सम्पूर्ण वेतन व समस्त हितलाभों सहित सेवा में बहाल किये जाने की प्रार्थना न्यायाधिकरण से की है।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थी ने प्रार्थीगण द्वारा दि. 1/8/90 से अप्रार्थी के नियोजन में दैनिक कार्य करना स्वीकार किया है व दि. 18/12/90 से प्रार्थीगण को कार्य पर नहीं लिये जाने का तथ्य भी स्वीकार किया है, परन्तु अप्रार्थी ने प्रार्थीगण द्वारा दि. 1/8/90 से 17/12/90 तक कुल 139 दिन ही दैनिक कार्य करना व्यक्त किया है व इस मामले में अधिनियम की धारा 25-एफ, जी व औ.वि.नियमों के नियम 77 के प्रावधान लागू होने से इन्कार किया है। जवाब की विशेष आपत्तियों में अप्रार्थी द्वारा प्रार्थीगण को दि. 1/8/90 से दैनिक कार्यकर्ता के रूप में इस शर्त पर बारां व अन्ता में कार्य पर रखा जाना कहा गया है कि नियमित श्रमिकों की नियुक्ति हो जाने पर उनकी सेवायें स्वतः समाप्त समझी जायेंगी। इस शर्त के

अनुसार नियमित श्रमिकों की नियुक्ति हो जाने पर प्रार्थीगण को दिनांक 18/12/90 से कार्य पर नहीं रखा जाना कहा गया है व पुनः प्रार्थीगण द्वारा दिनांक 1/8/90 से 17/12/90 तक कुल 139 दिन ही कार्य करने से प्रार्थीगण को अधिनियम के प्रावधानों का कोई लाभ प्राप्त करने का अधिकारी नहीं होना व्यक्त करते हुए प्रार्थीगण की ओर से प्रस्तुत क्लेम स्टेटमेंट खारिज किये जाने की प्रार्थना न्यायाधिकरण से की गयी है।

5. साक्ष्य में प्रार्थीगण की ओर से स्वयं प्रार्थी सूरजमल व नवनीत सिंह तथा अप्रार्थी पक्ष की ओर से सीताराम के शपथ—पत्र प्रस्तुत किये गये, जिनसे दोनों पक्षों के प्रतिनिधिगण द्वारा एक—दूसरे पक्ष के शपथ—पत्रों पर जिरह की गयी। प्रलेखीय साक्ष्य में प्रार्थीगण की ओर से प्रदर्श डबल्यू1 लगायत डबल्यू2 तक के प्रलेख प्रस्तुत कर प्रदर्शित करवाये गये। अप्रार्थी पक्ष की ओर से कोई प्रलेखीय साक्ष्य प्रस्तुत नहीं हुई।

6. उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी गयी, उनकी ओर से लिखित बहस भी प्रस्तुत की गयी, जिसका तथा पत्रावली पर उपलब्ध साक्ष्य व सामग्री का ध्यानपूर्वक परिशीलन किया गया।

7. प्रार्थीगण के विद्वान प्रतिनिधि ने न्यायाधिकरण के समक्ष तर्क रखा है कि प्रार्थी नवनीत सिंह को दि. 13/10/89 एवं प्रार्थी सूरजमल को दि. 11/12/89 से अप्रार्थी द्वारा सेवा में नियोजित किया गया था तथा इन दोनों प्रार्थीगण श्रमिक ने दि. 17/12/90 तक अप्रार्थी के नियोजन में निरन्तर कार्य करते हुए 240 दिन से अधिक समय तक कार्य कर लिया था, परन्तु अप्रार्थी द्वारा दि. 18/12/90 से प्रार्थीगण को अधिनियम की धारा 25—एफ, जी व औ. वि.नियमों के नियम 77 की पालना किये बगैर सेवा से निष्कासित कर दिया, अतः प्रार्थीगण नियोजक के यहाँ पिछले सम्पूर्ण वेतन व समस्त हितलाभों सहित सेवा में बहाल किये जाने योग्य हैं।

8. इसके विपरीत दूसरी ओर अप्रार्थी के विद्वान प्रतिनिधि की ओर से तर्क रखा गया है कि प्रार्थीगण को दिनांक 1/8/90 को अप्रार्थी के यहाँ इस शर्त पर बारां व अन्ता में कार्य पर रखा गया था कि नियमित श्रमिकों की नियुक्ति हो जाने पर उनकी सेवायें स्वतः समाप्त समझी जावेंगी। प्रार्थीगण ने दिनांक 1/8/90 से 17/12/90 तक कुल 139 दिन ही कार्य किया है इसलिए वे अधिनियम की धारा 25—एफ व अन्य प्रावधान का लाभ प्राप्त करने के अधिकारी नहीं हैं।

9. प्रार्थीगण का पक्ष रहा है कि प्रार्थी नवनीत सिंह दि. 13/10/89 व प्रार्थी सूरजमल दि. 11/12/89 से अप्रार्थी सहायक अभियन्ता—II, सूक्ष्म तरंग अनुसरक्षण, न्यायपुरा, कोटा के यहाँ नियोजित होने के उपरान्त उनकी प्रथम नियुक्ति माईक्रोवेव प्रोजेक्ट के यहाँ हुई थी, वहाँ से प्रार्थीगण को दि. 1/8/90 से स्थानान्तरित कर उक्त नियोजक के यहाँ भेजा गया व दि. 17/12/90 तक प्रार्थीगण ने अप्रार्थी के यहाँ 240 दिन से अधिक का कार्य किया है, परन्तु अप्रार्थी द्वारा उन्हें अचानक दि. 18/12/89 से नौकरी से अपैद 1 रुप से हटा दिया गया। जब भी कोई कर्मकार नियोजक के नियोजन में निरंतर 240 दिन तक कार्य किया जाना व्यक्त करता है तो इस तथ्य को सिद्ध करने का भार स्वयं कर्मकार पर रहता है कि उसने सेवा समाप्ति तिथि से ठीक

पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन तक नियोजक के नियोजन में कार्य किया है, जैसा कि माननीय उच्चतम न्यायालय द्वारा अपने निम्न न्यायनिर्णय में अभिमत प्रकट किया गया है:—

(1) “Surendranagar Distt. Panchayat & Anr. v. Gangaben Laljibhai & Ors.-2006(2)ACJ 408(SC)”

10. न्यायदृष्टांत “आर.एम. येल्टटी बनाम सहायक अधिशासी अभियन्ता—2006(108) एफएलआर 213 (एससी)” के मामले में माननीय उच्चतम न्यायालय द्वारा यह भी प्रतिपादित किया गया है कि कर्मकार पर 240 दिन लगातार काम करने के तथ्य को साबित करने का जो भार है, उसमें कर्मकार द्वारा केवल मात्र अपने शपथ—पत्र में यह लिख देना कि उसने 240 दिन तक लगातार काम किया, पर्याप्त नहीं होगा, अपितु उसे किसी ठोस मौखिक एवं दस्तावेजी साक्ष्य से इस तथ्य को साबित करना होगा जिससे कि यह तथ्य सम्पूर्ण हो सके। इस सम्बन्ध में न्यायनिर्णय के पेरा संख्या 17 निम्नानुसार है:—

“Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of terminating of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter of facts of each case. The above however make it clear that mere affidavits or self-serving statements made by the claimant/ workman will not suffice in the matter of discharge of the burden placed for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case.”

11. हस्तगत मामले में प्रार्थी नवनीत सिंह ने अपने पक्ष समर्थन में स्वयं का शपथ-पत्र प्रस्तुत कर व्यक्त किया है कि उसे दि. 13/10/89 से सहायक अभियन्ता, माईक्रोवेव प्रोजेक्ट के यहाँ सेवा में नियोजित किया गया था व उसे स्थानान्तरित कर अप्रार्थी के यहाँ कार्य हेतु भेज दिया गया था। उसके द्वारा शपथ-पत्र में आगे यह भी अंकित किया गया है कि प्रार्थी ने अप्रार्थी के यहाँ दि. 13/10/89 से 17/12/90 तक निरन्तर 240 दिन से अधिक का कार्य कर लिया है, परन्तु अप्रार्थी द्वारा अचानक बिना कोई पूर्ण सूचना के दि. 18/12/90 से प्रार्थी को नौकरी से हटा दिया। अपनी जिरह में यह साक्षी व्यक्त करता है कि इस साक्षी ने किस समय तथा किस अधिकारी के पास कार्य किया, इसे मौखिक जबानी याद नहीं है। इस प्रकार साक्षी को यह ध्यान नहीं है कि इसने अप्रार्थी के यहाँ नियोजित होने पर किस समय तक किस अधिकारी के यहाँ कार्य किया है। इसी प्रकार प्रार्थी सूरजमल ने भी अपने पक्ष समर्थन में स्वयं का शपथ-पत्र प्रस्तुत कर दि. 11/12/89 से सहायक अभियन्ता, माईक्रोवेव प्रोजेक्ट के यहाँ नियोजित होने व तदुपरान्त दि. 1/8/90 से स्थानान्तरित होकर अप्रार्थी के यहाँ कार्य हेतु भेजा जाना व्यक्त किया है व अप्रार्थी के यहाँ 11/12/89 से 17/12/90 तक निरन्तर कार्य करते हुए 240 दिन से अधिक समय तक कार्य करना व्यक्त किया है। अपनी जिरह में यह साक्षी स्वयं को कार्य पर रखे जाने का कोई नियुक्ति-पत्र दिये जाने से इन्कार करता है। इस साक्षी ने सर्वप्रथम स्वयं की नियुक्ति झालावाड़ में होने व 8 दिन झालावाड़ में, तदुपरान्त दि. 17/12/89 से दरा स्टेशन पर 8 दिन व पुनः दरा स्टेशन पर 15 दिन काम करना व्यक्त किया है। दरा स्टेशन के बाद यह साक्षी कोटा में एक माह काम करना व्यक्त करता है, तदुपरान्त बूदी, बोराबास, आरएपीपी रावतभाटा, बारां व अन्ता में काम करना व्यक्त करता है व अन्तिम माह के वेतन के अलावा अन्य सारे काम का पैसा प्राप्त होना व्यक्त करता है। इस साक्षी ने अपनी जिरह में इस तथ्य को स्वीकार किया है कि जब इसे अन्ता से हटाया गया तो इसके स्थान पर स्थायी कर्मचारी की नियुक्ति हो गयी थी।

12. इस प्रकार उपरोक्त मौखिक साक्ष्य के आधार पर प्रार्थीगण, अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि, अर्थात् दि. 18/12/89 से 17/12/90 तक की सुसंगत अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित करने में असफल रहा है। इस सम्बन्ध में प्रार्थीगण की ओर से प्रस्तुत की गयी दस्तावेजी साक्ष्य से प्रकट होता है कि प्रदर्श डबल्यू१ पत्र दोनों ही प्रार्थीगण अपने-अपने शपथ-पत्रों में सहायक अभियन्ता, माईक्रोवेव प्रोजेक्ट के यहाँ से स्वयं को स्थानान्तरित कर अप्रार्थी के यहाँ भेजे जाने के सम्बन्ध में दिया जाना कहते हैं। प्रार्थीगण के विद्वान् प्रतिनिधि द्वारा उक्त पत्र के आधार पर प्रार्थीगण का अप्रार्थी के नियोजन में होने का तथ्य प्रमाणित होना कहा गया है। उक्त पत्र प्रदर्श डबल्यू१ के अवलोकन से प्रकट होता है कि उक्त पत्र में सहायक अभियन्ता, सूक्ष्म तरंग अनुरक्षण, नग्युपुरा, कोटा द्वारा प्रार्थीगण को सूचित किया गया है कि उन्हें माईक्रोवेव प्रोजेक्ट से मेन्टीनेन्स में दिनांक 1/8/90 से लौन पर लिया गया है और नियमित मजदूरों की नियुक्ति होने तक ही प्रार्थीगण को नौकरी पर रखा जायेगा। मजदूरों की नियुक्ति होते ही उन्हें वापस प्रोजेक्ट को दे दिया जावेगा। इस प्रकार यद्यपि दिनांक 1/8/90 से प्रार्थीगण द्वारा अप्रार्थी के यहाँ कार्य पर मजदूरी हेतु रखे जाने का उल्लेख है, परन्तु उक्त

दस्तावेज के माध्यम से प्रार्थीगण द्वारा अप्रार्थी के नियोजन में सुसंगत अवधि में 240 दिन कार्य किये जाने का कोई उल्लेख नहीं है। अतः उक्त दस्तावेज प्रार्थीगण को कोई लाभ नहीं पहुँचाता है। प्रदर्श डबल्यू२ केन्द्रीय प्रशासनिक न्यायाधिकरण, जयपुर द्वारा दिनांक 13/12/93 को पारित आदेश की प्रति है जिसमें प्रार्थी सूरजमल व अन्य को पहले औ.वि.अधिनियमान्तर्गत उपलब्ध उपचार हेतु प्रयास किये जाने के निर्देश दिये गये हैं। इस प्रकार उक्त दस्तावेज भी प्रार्थीगण को 240 दिन कार्य किये जाने के तथ्य को साबित करने में कोई लाभ नहीं पहुँचाता है। प्रदर्श डबल्यू३ प्रार्थी सूरजमल द्वारा सहायक श्रम आयुक्त(केन्द्रीय), कोटा के समक्ष प्रस्तुत की गयी शिकायत की प्रति है। इसी प्रकार प्रदर्श डबल्यू६ भी प्रार्थी नवनीत सिंह द्वारा प्रस्तुत शिकायत-पत्र की प्रति है, परन्तु उक्त दस्तावेज भी प्रार्थीगण द्वारा 240 दिन कार्य पूर्ण किये जाने के तथ्य को प्रमाणित किये जाने के सम्बन्ध में कोई लाभ नहीं पहुँचाते हैं। प्रदर्श डबल्यू७ प्रार्थी नवनीत सिंह व अप्रार्थी द्वारा प्रस्तुत शिकायत-पत्र के सम्बन्ध में अप्रार्थी द्वारा प्रस्तुत जवाब की प्रतियां हैं। उक्त दस्तावेज भी प्रार्थीगण को 240 दिन कार्य पूर्ण किये जाने के तथ्य को साबित किये जाने के सम्बन्ध में कोई लाभ नहीं पहुँचाते हैं। इसी प्रकार प्रदर्श डबल्यू८ प्रार्थीगण के सम्बन्ध में श्रम विभाग द्वारा सक्षम सरकार को प्रेषित असफल वार्ता प्रतिवेदन की प्रति है जो उक्त दस्तावेज भी प्रार्थीगण को 240 दिन कार्य पूर्ण किये जाने के तथ्य को प्रमाणित करने में कोई लाभ नहीं पहुँचाता है।

13. इस प्रकार पत्रावली पर उपलब्ध मौखिक एवं दस्तावेजी साक्ष्य के आधार पर प्रार्थीगण, अप्रार्थीगण के यहाँ नियोजन में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित करने में पूर्णतया असफल रहा है।

14. इस सम्बन्ध में अप्रार्थी पक्ष की ओर से प्रस्तुत साक्षी सीताराम, सब डिविजनल इंजीनियर ने साक्ष्य में प्रस्तुत अपने शपथ-पत्र में व्यक्त किया है कि प्रार्थी सूरजमल ने दि. 1/8/90 से 17/12/90 तक बीच-बीच में काम छोड़कर अपनी मरजी के अनुसार 139 दिन दैनिक वेतन भोगी श्रमिक के रूप में 33.50 पैसे प्रचलित रेट पर कार्य किया है व प्रार्थी नवनीत सिंह ने अप्रार्थी के अधीन दि. 1/8/90 से 17/12/90 तक दैनिक वेतन भोगी श्रमिक के रूप में कार्य किया है। यह साक्षी उक्त दोनों प्रार्थीगण द्वारा नियमित श्रमिकों की नियुक्ति होने तक कार्य किया जाना व्यक्त करता है। इस साक्षी ने प्रार्थीगण द्वारा क्लेम स्टेटमेन्ट में अंकितानुसार सुसंगत अवधि अथवा किसी भी कलेण्डर वर्ष में निरन्तर 240 दिन कार्य किये जाने से इन्कार किया है व प्रार्थीगण द्वारा केवल मात्र कुल 139 दिन ही कार्य किया जाना व्यक्त किया है व नियमित श्रमिकगण की नियुक्ति हो जाने से प्रार्थीगण की सहमति अनुसार ही उन्हें कार्य से हटाया जाना व्यक्त किया है। इस सम्बन्ध में प्रार्थीगण की ओर से प्रस्तुत दस्तावेज प्रदर्श डबल्यू१ के अवलोकन से भी प्रकट होता है कि अप्रार्थी द्वारा प्रार्थीगण को मजदूरी हेतु नियमित मजदूरों की नियुक्ति होने तक ही लगाया गया था। स्वयं प्रार्थी नवनीत सिंह अपनी जिरह में प्रदर्श डबल्यू१ स्वयं को प्राप्त होना व इसी आधार पर स्वयं के द्वारा कार्य किया जाना व्यक्त करता है व प्रार्थी सूरजमल भी अपनी जिरह में स्वीकार करता है कि जब से अन्ता से हटाया गया तब इसके स्थान पर स्थायी कर्मचारी की नियुक्ति हो गयी थी। इस प्रकार प्रार्थीगण का पक्ष रहा है कि उन्होंने प्रदर्श डबल्यू१ आधार पर

अप्रार्थी के यहाँ कार्य करना प्रारम्भ किया था तथा उक्त दस्तावेज में नियमित मजदूरों की नियुक्ति होने तक ही प्रार्थीगण को मजदूरी कार्य के लिए लगाया जाना प्रकट होता है व उक्त दस्तावेज प्रदर्श डबल्यू1 से भी प्रार्थी द्वारा अप्रार्थी के नियोजन में निरन्तर 240 दिन कार्य किये जाने का तथ्य प्रमाणित नहीं होता है। इस प्रकार प्रार्थीगण मौखिक एवं दस्तावेजी साक्ष्य के आधार पर अप्रार्थी के नियोजन में सेवा से निष्कासित किये जाने की तिथि, अर्थात् 18/12/90 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित करने में पूर्णतया असफल रहे हैं।

15. यद्यपि प्रार्थीगण की ओर से दौरान बहस अन्तिम व लिखित बहस के माध्यम से एक तर्क यह भी रखा गया है कि सामान्य प्रशासनिक प्रक्रिया के अन्तर्गत लोन पर लिया जाना स्थानान्तरण का पर्याय है व स्पष्ट रूप से उन्हें प्रोजेक्ट में भेजने का आदेश पारित किया गया है कि व्योकि लोन पर देने वाले विभाग की कार्य की आवश्यकता किसी भी रूप में लोन पर लेने वाले विभाग द्वारा आंकित नहीं की जा सकती। प्रार्थीगण का पूर्व विभाग ही उनकी आवश्यकता के अनुरूप निर्णय लेगा। अतः प्रार्थीगण को अप्रार्थी द्वारा दि. 18/12/90 को बिना कारण बताये औवि.अधिनियम के प्रावधानों की पालना किये बगैर सेवा से पृथक किया गया। परन्तु हस्तगत मामले में सम्प्रेषित रेफ्रेन्स अप्रार्थी पक्ष द्वारा दिनांक 18/12/90 से प्रार्थीगण की सेवा समाप्ति की कार्यवाही की उचितता एवं वैधता का विनिश्चय किये जाने हेतु इस न्यायाधिकरण को प्रेषित किया गया है, अतः इस न्यायाधिकरण को इस विवाद में प्रार्थीगण को लोन पर लेने वाले विभाग/अप्रार्थी के कश्य का ही विनिश्चय किया जाना है। अतः जहाँ तक प्रार्थीगण का विवाद लोन पर देने वाले विभाग से सम्बन्धित है, वह पश्चक से कार्यवाही करने के लिए स्वतंत्र है। इन परिस्थितियों में प्रार्थी पक्ष की ओर से उठाये गये उक्त तर्क में हम कोई बल नहीं पाते हैं।

16. यद्यपि प्रार्थीगण की ओर से न्यायाधिकरण के समक्ष एक तर्क यह रखा गया है कि अप्रार्थी द्वारा प्रार्थीगण के कार्य से सम्बन्धित दस्तावेज प्रार्थना-पत्र के माध्यम से तलब कराये जाने के उपरान्त भी अप्रार्थीगण द्वारा उन्हें न्यायाधिकरण के समक्ष प्रस्तुत नहीं किया गया है, अतः अप्रार्थी के विरुद्ध विपरीत उपधारणा ली जाकर प्रकरण का निस्तारण किया जावे। इस सम्बन्ध में पत्रावली के अवलोकन से प्रकट होता है कि यद्यपि दि. 3/10/07 को प्रार्थीगण की ओर से प्रार्थना-पत्र प्रस्तुत किया जाकर अप्रार्थी से हाजिरी रजिस्टर आदि दस्तावेजात तलब कराये जाने की प्रार्थना न्यायाधिकरण से की गयी थी, परन्तु उक्त प्रार्थना-पत्र का जवाब प्रस्तुत कर अप्रार्थी ने प्रार्थीगण द्वारा दिनांक 13/10/89 से स्वयं के अधीन कार्य किये जाने से इन्कार किया है बल्कि प्रार्थीगण द्वारा दि. 1/8/90 से 17/12/90 तक की अवधि में मात्र 139 दिन ही कार्य करना व्यक्त किया है। इसके अतिरिक्त अप्रार्थी ने दस्तावेजात स्वयं के पास उपलब्ध नहीं होना भी जवाब प्रार्थना-पत्र में अकित किया है। इसके अतिरिक्त माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत “2004 डीएनजे 857 (एससी)-म्यूनिसिपल कोरपोरेशन फरीदाबाद बनाम श्री निवास” में यह अभिमत प्रकट किया गया है कि जहाँ कर्मकार/श्रमिक

यह साबित करने में असफल रहा है कि उसने सेवा समाप्ति के पूर्ववर्ती 12 कलेण्डर माह में 240 दिन तक लगातार कार्य किया है व न्यायाधिकरण द्वारा यह निष्कर्ष निकाला गया था कि कर्मकार/श्रमिक द्वारा 184 दिन तक कार्य किया गया है, परन्तु उच्च न्यायालय ने श्रमिक के पक्ष में उपधारणा लेते हुए श्रमिक के पक्ष में सेवा की बहाली का आदेश पारित किया। उपरोक्त विधियों में माननीय उच्चतम न्यायालय द्वारा यह अभिमत प्रकट किया गया कि उच्च न्यायालय द्वारा अप्रार्थी प्रबन्धन के विरुद्ध अभिलेख प्रस्तुत नहीं किये जाने की जो उपधारणा ली गयी वह न्यायसंगत नहीं थी, साथ ही यह भी अभिमत प्रकट किया गया कि साक्ष्य अधिनियम के समस्त प्रावधान श्रम एवं औद्योगिक सम्बन्धी मामलों पर लागू नहीं होते हैं। इस सम्बन्ध में माननीय उच्चतम न्यायालय के इस न्यायनिर्णय का मुख्य शीर्षक निम्न प्रकार से है—

“Industrial Disputes Act, 1947-Sec. 25-F & 25-B- Evidence Act, 1872— Sec. 114 (f)- Retrenchment-Applicability— Respondent failed to prove that he had worked for 240 days in preceding year- Tribunal held that appellant- workman had worked for 184 days- However, High Court adverted to presumption in favour of workman and directed reinstatement- Held, High Court was not justified in invoking adverse presumption against appellant- Provisions of Evidence Act per se not attracted to industrial adjudication.”

17. इसी प्रकार माननीय राजस्थान उच्च न्यायालय द्वारा न्यायदृष्टांत “2007(3)आरएलडबल्यू. 1999(राज.)-चैयरमेन, म्यूनिसिपल बोर्ड बनाम महावीर प्रसाद शर्मा एवं अन्य” में यह अभिमत प्रकट किया गया है कि स्पष्ट साक्ष्य से यह साबित करने का सबूत भार कर्मकार पर रहता है कि उसने अन्तिम कलेण्डर वर्ष में 240 दिन कार्य किया था। कर्मकार का मात्र शपथ-पत्र प्रस्तुत करना ही पर्याप्त नहीं है व नियोजक/प्रबन्धक द्वारा अभिलेख पेश नहीं करने से प्रबन्धक के विरुद्ध प्रतिकूल अनुमान निकालने की न्यायालय को अनुमति नहीं होगी।

18. हस्तगत मामले में भी माननीय उच्चतम न्यायालय के उक्त उद्भूत/सुरेन्द्र नगर डिस्ट्रिक्ट पंचायत एवं अन्य बनाम गंगाबेन लालजी भाई एवं अन्य-2006(2)एसीजे 408(एससी) तथा आर.एम.येल्टटी बनाम सहायक अधिशासी अभियन्ता-2006(108) एफएलआर 213(एससी)“ न्यायदृष्टांतों में प्रतिपादित सिद्धांतों के अनुसार अप्रार्थी के नियोजन में सेवा समाप्ति तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को सिद्ध करने का भार प्रार्थीगण श्रमिक पर था, परन्तु प्रार्थीगण द्वारा उक्त तथ्य को साबित करने हेतु केवल मात्र स्वयं के शपथ-पत्र प्रस्तुत किये गये हैं व उक्त तथ्य की पुष्टि किसी दस्तावेजी साक्ष्य से नहीं की जा सकती है। अतः प्रार्थीगण उक्त तथ्य को साबित करने में असफल रहे हैं, इन परिस्थितियों में हम उक्त उद्भूत “महावीर प्रसाद” एवं “श्रीनिवास” वाले न्यायदृष्टांतों का अवलम्ब लेते हुए अप्रार्थी के विरुद्ध विपरीत उपधारणा लिया जाना न्यायोचित नहीं पाते हैं।

19. यद्यपि प्रार्थीगण द्वारा न्यायाधिकरण का ध्यान परिशिष्ट-5 की ओर भी आकर्षित किया गया है, परन्तु प्रथमतः उक्त दस्तावेज न्यायाधिकरण के समक्ष प्रदर्शित नहीं करवाया गया है। इसके अतिरिक्त उक्त दस्तावेज में प्रार्थीगण के नामों का कोई अंकन नहीं है, अतः उक्त दस्तावेज भी प्रार्थीगण को कोई लाभ नहीं पहुँचाता है।

20. यद्यपि प्रार्थी द्वारा प्रार्थी के कार्य से सम्बन्धित मासिक रेकार्ड पत्रावली पर उपलब्ध होना व्यक्त किया गया है, परन्तु उक्त रेकार्ड प्रदर्शित नहीं करवाया गया है, फिर भी उक्त रेकार्ड के अवलोकन से प्रकट होता है कि उक्त रेकार्ड प्रार्थी को कोई लाभ नहीं पहुँचाता है।

21. प्रार्थीगण का एक पक्ष यह भी रहा है कि अप्रार्थी द्वारा उन्हें दि. 18/12/90 से अवैध रूप से अचानक बिना कोई कारण बताये सेवा से निष्कासित कर दिया गया, परन्तु इस सम्बन्ध में प्रदर्श डबल्यू1 स्वयं प्रार्थीगण की ओर से प्रस्तुत दस्तावेज के अवलोकन से प्रकट होता है कि उक्त दस्तावेज में अप्रार्थी द्वारा प्रार्थीगण को माईक्रोवेव प्रोजेक्ट से मेन्टीनेन्स में दिनांक 1/8/90 से लोन पर लिये जाने का उल्लेख किया गया है व नियमित मजदूरों की नियुक्ति होने तक ही प्रार्थीगण को नौकरी पर रखा जाना भी प्रदर्श डबल्यू 1 में अंकित किया गया है। दोनों ही प्रार्थीगण ने प्रदर्श डबल्यू1 स्वयं को अप्रार्थी द्वारा दिया जाना अपने शपथ—पत्रों में व्यक्त किया है व इसी दस्तावेज में प्रार्थीगण को मजदूरी के कार्य के लिए एक सीमित अवधि के लिए लगाये जाने का उल्लेख है। स्वयं प्रार्थी नवनीत सिंह ने अपनी जिरह में प्रदर्श डबल्यू1 स्वयं को प्राप्त होना व इसी आधार पर काम करना स्वीकार किया है व प्रार्थी सूरजमल ने भी अपनी जिरह में इस तथ्य को स्वीकार किया है कि जब इसे अन्ता से हटाया गया तब इसके स्थान पर स्थायी कर्मचारी की नियुक्ति हो गयी थी। इस प्रकार प्रार्थीगण को एक सीमित अवधि के लिए लोन पर लिया जाना प्रकट होता है व सीमित अवधि के लिए प्रार्थीगण को कार्य पर लगाया गया था तथा उक्त अवधि समाप्त होने पर प्रार्थीगण की सेवायें जारी नहीं रखना औ.वि.अधिनियम की धारा (ओओ)(बीबी) जो छंटनी के अपवाद स्वरूप है, को दृष्टिगत रखते हुए उक्त मामला छंटनी का नहीं माना जा सकता। इन परिस्थितियों में हम प्रार्थी का मामला छंटनी का होना नहीं मानते हैं।

22. प्रार्थीगण की ओर से न्यायदर्शितांत “2015 डीएनजे(एससी) 143—जसमेर सिंह बनाम स्टेट आफ हरियाणा एवं अन्य” पेश किया गया है। उक्त न्यायदर्शितांत में वर्णित तथ्यों के मुताबिक कर्मकार द्वारा निरन्तर 240 दिन कार्य किया गया था ऐसी परिस्थिति में कर्मकार के सेवा से निष्कासन किये जाने के श्रम न्यायालय के आदेश को माननीय उच्चतम न्यायालय द्वारा सही ठहराया गया, परन्तु हस्तगत मामले में प्रार्थीगण द्वारा अप्रार्थी के नियोजन में निरन्तर 240 दिन कार्य किये जाने का तथ्य प्रमाणित नहीं हो पाया है, इन परिस्थिति में उक्त न्यायदर्शितांत से प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचता है।

23. प्रार्थीगण की ओर से न्यायदर्शितांत “2005(105)एफएलआर 1067(एससी)—मैनेजर आरबीआई बैंगलोर बनाम एस.मनी एवं अन्य” पेश किया

गया है। उक्त न्यायदर्शितांत में वर्णित अनुसार यदि किसी कर्मकार की छंटनी औ. वि.अधिनियम की धारा 25—एफ का उल्लंघन करते हुए की गयी है तो उस परिशिष्ट में वह क्षतिपूर्ति प्राप्त करने का अधिकारी है, परन्तु हस्तगत मामले में प्रार्थीगण, अप्रार्थी के नियोजन में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित करने में असफल रहे हैं। इसके अतिरिक्त प्रार्थीगण का मामला छंटनी का भी नहीं है, इन परिस्थितियों में उक्त न्यायदर्शितांत प्रार्थीगण को कोई लाभ नहीं पहुँचता है।

24. प्रार्थीगण की ओर से न्यायदर्शितांत “एआईआर 2010 एससी 1116—हरजिन्दर सिंह बनाम पंजाब स्टेट वेयरहाउसिंग कोरपोरेशन तथा 2006(111) एफएलआर 1202(एससी)—भोगपुर को—ऑपरेटिव शुगर मिल्स लि. बनाम हरमेश कुमार” पेश किये गये हैं। इन न्यायदर्शितांतों में वर्णित अनुसार जहाँ छंटनी को इस आधार पर चुनौती दी गयी थी कि बाद आये पहले जाय सिद्धांत की अवहेलना कर छंटनी की गयी है तो ऐसी परिस्थिति में कर्मकार को यह सिद्ध करना आवश्यक नहीं है कि उसने सेवा समाप्ति की तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन पूर्ण कार्य किया या नहीं, परन्तु हस्तगत मामले में प्रार्थीगण की ओर से ऐसी कोई साक्ष्य प्रस्तुत नहीं की गयी है जिससे प्रकट होता हो कि प्रार्थीगण की अप्रार्थी द्वारा छंटनी की गयी हो। इन परिस्थिति में उक्त न्यायदर्शितांत भी प्रार्थीगण को कोई लाभ नहीं पहुँचते हैं।

25. प्रार्थीगण की ओर से न्यायदर्शितांत “आएलआर 2005(3) पृष्ठ 63—मि.मित्तल स्टील मेन्युफेक्चरिंग कंपनी बनाम छोटाराम एवं अन्य” पेश किया गया है। उक्त न्यायदर्शितांत में नियोजक के विरुद्ध विपरीत उपधारणा लिये जाने की परिस्थिति का वर्णन किया गया है, परन्तु माननीय उच्चतम न्यायालय के उक्त उदृत न्यायदर्शितांत “2004 डीएनजे 857 (एससी)—म्यूनिसिपल कोरपोरेशन फरीदाबाद बनाम श्री निवास” में प्रतिपादित सिद्धांत की रोशनी में प्रार्थीगण की ओर से प्रस्तुत उक्त न्यायदर्शितांत प्रार्थीगण को कोई लाभ नहीं पहुँचता है।

26. प्रार्थीगण की ओर से न्यायदर्शितांत “एआईआर 2010 एससी 1236—डॉयरेक्टर फिशरीज टर्मीनल डिविजन बनाम भीखाभाई, मेघाजीभाई चावडा” पेश किया गया है जिसमें नियोजक पर कर्मकार द्वारा 240 दिन कार्य किये जाने के तथ्य को साबित करने का भार बदलने की बात कही गयी है, परन्तु उक्त न्यायदर्शितांत खण्डपीठ द्वारा पारित किया गया न्यायदर्शितांत है, जबकि हस्तगत मामले में उक्त उदृत माननीय उच्चतम न्यायालय के न्यायदर्शितांत आर.एम.येल्टी बनाम सहायक अधिशासी अभियन्ता—2006(108) एफएलआर 213(एससी)“जोकि वृद्ध पीठ द्वारा पारित किया गया है, में स्पष्ट रूप से यह प्रतिपादित किया गया है कि कर्मकार द्वारा निरन्तर 240 दिन कार्य किये जाने के तथ्य को सिद्ध करने का भार कर्मकार पर ही रहता है। अतः प्रार्थीगण द्वारा प्रस्तुत उक्त न्यायदर्शितांत प्रार्थीगण को कोई लाभ नहीं पहुँचता है।

27. प्रार्थीगण की ओर से न्यायदर्शितांत “1993(66) एफएलआर 345(राज.)—हेमराज गूर्जर बनाम स्टेट आफ राजस्थान” पेश किया गया है, परन्तु हस्तगत प्रकरण में प्रार्थीगण का मामला छंटनी का नहीं है तथा प्रार्थीगण सेवा समाप्ति तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य

पूर्ण किये जाने के तथ्य को साबित करने में पूर्णतया असफल रहे हैं, ऐसी परिस्थिति में उक्त न्यायदृष्टांत भी प्रार्थीगण को कोई लाभ नहीं पहुँचाता है।

28. इस प्रकार उपरोक्त सम्पूर्ण विवेचन के आधार पर हम यह पाते हैं कि प्रार्थीगण, अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि दि. 18/12/90 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य पूर्ण किये जाने के तथ्य को साबित करने में पूर्णतया असफल रहे हैं। प्रार्थीगण का मामला छंटनी का नहीं है। अतः इन समस्त परिस्थितियों में प्रार्थीगण अधिनियम की धारा 25-एफ व जी के प्रावधनात्तर्गत कोई संरक्षण प्राप्त करने के अधिकारी नहीं होने से अप्रार्थी नियोजक के विरुद्ध कोई अनुतोष प्राप्त करने के अधिकारी होना नहीं पाये जाते हैं एवं निर्देश/रेफेन्स भी इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 9/6/95 के जरिये सम्प्रेषित निर्देश/रेफेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थीगण श्रमिक नवनीत सिंह व सूरजमल, अप्रार्थी नियोजक के नियोजन में सेवा समाप्ति तिथि दि. 18/12/90 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य पूर्ण किये जाने के तथ्य को साबित करने में पूर्णतया असफल रहे हैं। प्रार्थीगण का मामला छंटनी का नहीं है। अतः इन समस्त परिस्थितियों में प्रार्थीगण अप्रार्थी नियोजक के विरुद्ध कोई अनुतोष प्राप्त करने के अधिकारी नहीं है।

श्रीमती अनिता शर्मा, न्यायाधीश

नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गोयल कंस्ट्रक्शन एंड इंजीनियर्स एंड अर्दस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 23/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/12/2015 को प्राप्त हुआ था।

[सं. एल-42012/180/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2284.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 23/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Goel Construction and Engineers and Others and their workmen, which was received by the Central Government on 09/12/2015.

[No. L-42012/180/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRIAVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 23/2015

Shri Joginder Sharma,
Through Indian Steel and
Metal Workers Union,
1800/9, Govindpuri Extension,
Main Road, Kalkaji,
New Delhi 110 019

...Workman

Versus

1. M/s Goel Construction & Engineers,
C – 503, JVTs Garden,
Chhattarpur Extension,
New Delhi 110 074

2. Health and Family Welfare Centre,
Baba Ganga Nath Marg,
Munirka,
New Delhi

...Managements

AWARD

Central Government, vide letter No. L-42012/180/2014-IR(DU) dated 08.01.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of the workman Shri Joginder Sharma S/o Shri Kewal Ram by the management of M/s. Goel Construction & Engineers a sub contractor of NPCC in the establishment of National Health and Family Welfare Centre, Principal Employer w.e.f. 01.02.2013 is just, fair and legal? If not, what relief the workman concerned is entitled to?

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Joginder Sharma opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman herein as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman herein. Despite service of the notice, initially nobody was appearing on behalf of the workman herein on several dates of hearing and later on, despite granting of opportunities workman herein opted not to file his statement of claim. Thus, it is

clear that the workman herein is not interested in adjudication of the reference on merits.

4. Since the workman herein has neither filed his statement of claim nor has led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : December 4, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2015

का.आ. 2285.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गोयल कंस्ट्रक्शन एंड इंजीनियर्स एंड अर्दस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 18/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/12/2015 को प्राप्त हुआ था।

[सं. एल-42012/175/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2015

S.O. 2285.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 18/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Goel Construction and Engineers and Others and their workmen, which was received by the Central Government on 09/12/2015.

[No. L-42012/175/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRIAVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No.18/2015

Shri Mani Ram,
Through Indian Steel and
Metal Workers Union,
1800/9, Govindpuri Extension,
Main Road, Kalkaji,
New Delhi 110 019

...Workman

Versus

1. M/s Goel Construction & Engineers,
C – 503, JVTs Garden,
Chhattarpur Extension,
New Delhi 110 074
2. Health and Family Welfare Centre,
Baba Ganga Nath Marg,
Munirka,
New Delhi ...Managements

AWARD

Central Government, vide letter No.L-42012/175/2014-IR(DUI) dated 08.01.2015, referred the following industrial dispute to this Tribunal for adjudication:

"Whether the termination of the workman Shri Mani Ram S/o Shri Teeju Lal by the management of M/s. Goel Construction & Engineers a sub contractor of NPCC in the establishment of National Health and Family Welfare Centre, Principal Employer w.e.f. 12.06.2013 is just, fair and legal? If not, what relief the workman concerned is entitled to?

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Mani Ram opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman herein as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman herein. Despite service of the notice, initially nobody was appearing on behalf of the workman herein on several dates of hearing and later on, despite granting of opportunities workman herein opted not to file his statement of claim. Thus, it is clear that the workman herein is not interested in adjudication of the reference on merits.

4. Since the workman herein has neither filed his statement of claim nor has led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : December 4, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2015

का.आ. 2286.—राष्ट्रपति, श्री देशपाण्डे मलहार विश्वनाथराव को 20.11.2015 (पूर्वाहन) से केन्द्रीय सरकार औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय नं. 2, मुम्बई, के पीठासीन अधिकारी के रूप में 65 वर्ष की आयु तक जो कि 18.04.2020 है अथवा अगले आदेशों तक, जो भी पहले हो, नियुक्त करते हैं।

[सं. ए-11016/02/2015-सीएलएस-II]

एस. के. सिंह, अवर सचिव

New Delhi, the 11th December, 2015

S.O. 2286.—The President is pleased to appoint Shri Deshpande Malhar Vishvnathrao as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai with effect from 20.11.2015 (Forenoon) till he attains the age of 65 years i.e. up to 18.04.2020 or until further orders, whichever is earlier.

[No. A-11016/02/2015-CLS-II]

S. K. SINGH, Under Secy.